

**Exhibit 5**

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PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298



May 21, 2010

**Advice Letter 3110-G/3651-E**

Jane K. Yura  
Vice President, Regulation and Rates  
Pacific Gas and Electric Company  
77 Beale Street, Mail Code B10B  
P.O. Box 770000  
San Francisco, CA 94177

**Subject: 0.3% Franchise Surcharge for Gas and Electric Customers within  
the City of San Jose**

Dear Ms. Yura:

Advice Letter 3110-G/3651-E is effective May 5, 2010.

Sincerely,

A handwritten signature in blue ink, appearing to read "Julie A. Fitch".

Julie A. Fitch, Director  
Energy Division

April 5, 2010

**Advice 3110-G/3651-E**

(Pacific Gas and Electric Company ID U 39 M)

Public Utilities Commission of the State of California

**Subject: 0.3% Franchise Surcharge for Gas and Electric Customers within the City of San Jose**

Pacific Gas and Electric Company (PG&E) hereby requests approval by the California Public Utilities Commission (Commission) to bill and collect from its customers within the City of San Jose (City) an additional three tenths of one percent (0.3%) electric franchise surcharge and an additional three tenths of one percent (0.3%) gas franchise surcharge to be remitted to the City by PG&E, pursuant to new amendments to PG&E's existing franchise agreements with the City.

A sample of the revised bill format(s) are attached as Attachment A to this advice letter.

**Purpose**

PG&E proposes to add an additional three tenths of one percent (0.30%) franchise fee surcharge line item on the electric and gas bills of customers within the City pursuant to PG&E's new amendments to the franchise agreements with the City, which expressly provide for the additional amount to be surcharged to customers within the City. Under the terms of the franchise agreements, in order for PG&E to bill and collect the additional franchise surcharge, PG&E must obtain the Commission's approval. Commission Decision (D.) 89-05-063, dated May 26, 1989 (32 CPUC 2d 60),<sup>1</sup> established the procedure for filing an advice letter where the local governmental entity requires the public utility to collect franchise fees exceeding the average franchise fees within the service territory of the utility. PG&E makes this filing pursuant to D.89-05-063.

**Background**

PG&E's electric and gas franchises with the City were obtained in 1971. The franchise agreements include a provision that allows either party, within a prescribed time frame that occurs every ten years, to request a change in the amount of compensation to be paid annually ("the Franchise Fee Re-opener"). In the event the parties do not reach agreement on any requested change in the compensation, the Franchise Fee Re-opener provides that either party may refer the matter to arbitration. As a charter city, the City is permitted to negotiate franchise fees in excess of the statutory formulas set forth in the Broughton Act (Pub. Util. Code §§ 6001-6017) or the Franchise Act of 1937 (Pub. Util. Code §§ 6231-35). See D. 89-05-063 (32 CPUC 2d 60, 64). Pursuant to the Franchise

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<sup>1</sup> Investigation 84-05-002, Guidelines For the Equitable Treatment of Revenue-Producing Mechanisms Imposed By Local Governmental Entities on Public Utilities.

Fee Re-Opener, the franchise agreements were amended in 1984 to increase the franchise fee to two percent (2.0%). The franchise agreements authorize either party to trigger the Franchise Fee Re-Opener next in calendar year 2011. PG&E and the City addressed the franchise fee to be paid under the electric and gas franchises, in advance of the prescribed time in Franchise Fee Re-Opener next year.<sup>2</sup> The parties recognized that an informal resolution of the franchise fee to be paid the City would avoid protracted negotiations and the transaction cost and expense of arbitration proceedings under the Franchise Fee Re-Opener. PG&E and the City reached agreement to structure an increase in the payment of franchise fees in accordance with the Commission's guidelines in D.89-05-063.

On February 23, 2010, the San Jose City Council adopted amendments to the electric and gas franchise agreements, Ordinance Nos. 28179 and 28720 (Attachment B, attached hereto and incorporated by reference).<sup>3</sup> The franchises require that PG&E pay the City a basic franchise fee of two percent (2.0%) of the gross annual receipts from the sale, transmission or distribution of gas and electricity within the City. In addition to the basic franchise fee, the electric and gas franchises provide for the payment of an additional three tenths of one percent (0.30%) of PG&E's gross annual receipts from its customers within the City, subject to the express condition that PG&E obtain Commission approval to collect and remit this additional amount to the City as a Franchise Fee Surcharge in accordance with D.89-05-063.

In D.89-05-063, the Commission addressed costs imposed on public utilities by local government revenue producing mechanisms and the appropriate ratemaking treatment for increases in franchise fees. As a preliminary matter, the Commission acknowledged that it did not dispute the authority or right of any local governmental entity which as a matter of general law or judicial decision has the jurisdiction to impose, levy or increase taxes and fees on utility customers or on the utility itself. (Id. at 69.) However, the Commission is the sole authority to determine and regulate the rates of a public utility for service furnished by it. (Id.) The Commission recognized that where franchise fees attributable to one city were substantially above the utility's service territory, being required to share in paying that city's higher-than-average costs in rates would result in inequities between classes of ratepayers. (Id.) The Commission stated:

To continue to incorporate significantly differing levels of new and escalating local entity taxes and fees in basic rates applicable equally to all ratepayers in a utility's service territory,

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<sup>2</sup> This agreement was the result of a settlement of several disputed matters between PG&E and the City, including the City's challenge of PG&E's implementation of the Municipal Public Lands Use Surcharge Act ("the Act") (Pub. Util. Code § 6350, et seq.). The Act requires PG&E and the other investor-owned energy utilities to collect "municipal surcharges" from customers that purchase their gas or electricity from third party energy service providers and to remit those funds to municipalities. The City's challenge of PG&E's implementation of the Act was previously raised with the Commission, which provided guidance as to the implementation of the Act in Decisions 03-10-040 (October 16, 2003) and 06-05-005 (May 11, 2006), but denied the City's requests for relief. Among other things, the settlement resolved the continuing dispute with the City concerning PG&E's implementation of the Act.

<sup>3</sup> The franchise agreements are memorialized in San Jose Ordinance Nos. 15879 and 15880, as amended by Ordinance Nos. 21676, 21677, 26913, 26914, 28179 and 28720, all of which are set forth in Attachment B.

increasingly means that some of these ratepayers would be subsidizing others but are not themselves benefiting from such increased taxes and fees. It is not just or reasonable that the significantly higher levels derived from some entities only should be buried in basic rates applicable to all ratepayers of the utility. Averaging such costs among all ratepayers creates inequities between classes of ratepayers. It is appropriate and reasonable that these significantly higher costs should be identified and borne only by the ratepayers in the local governmental area that originated them.

(Id., 32 CPUC 2d at 69.)

Pursuant to D.89-05-063, the Commission has recently approved electric and gas franchise fee surcharges on PG&E's customers in the City of Bakersfield. See PG&E's Advice Letter No. 2980-G/3380-E filed December 18, 2008, effective January 20, 2009 (authorizing PG&E to bill and collect a 1.0% franchise fee surcharge on electric and gas customers in the City of Bakersfield). The Commission has also approved electric and gas franchise fee surcharges by other public utilities. See Southern California Edison's Advice Letter No. 1881-E filed March 30, 2005, effective May 9, 2005 (authorizing SCE to bill and collect a 1.0% electric franchise fee surcharge on electric customers in the City of Santa Barbara); D.07-10-24 (2007 Cal. PUC LEXIS 560) (granting SoCalGas authorization to bill and collect a 1.0% gas franchise surcharge on gas customers in the City of Ventura). In approving the franchise fee surcharge in D.07-10-24, the Commission recognized that although the benefits of the increased franchise fees are generally localized, the ratepayers of SoCalGas also benefit as the burden of the surcharge will be paid only by customers in the City of Ventura, and not other customers throughout the utility's service territory. (Id., 2007 Cal. PUC LEXIS 560, \*7)

In accordance with D.89-05-063 and Section 4.1 of the electric and gas franchise agreements with the City which provide for the surcharge, PG&E shall collect, with the Commission's approval, the additional three-tenths of one percent (0.30%) as a surcharge. PG&E will bill and collect the surcharge revenues and remit the revenues directly to the City. The percentage would be the same for all classes of electric and gas customers located in the City.

Based on the gross annual electric and gas receipts in the City during 2009, PG&E estimates that the electric and gas surcharge will result in an additional collection of approximately \$2,700,000 annually, and represents an increase of \$0.23 to a typical City residential customer's monthly electric bill and \$0.12 to a typical City residential monthly gas bill.

PG&E shall implement the electric and gas franchise surcharge as soon as possible after Commission approval. The City supports this advice filing.

No cost information is required for this advice filing.

**Protests**

Anyone wishing to protest this filing may do so by letter sent via U.S. mail, by facsimile or electronically, any of which must be received no later than **April 26, 2010**, which is 21 days after the date of this filing. Protests should be mailed to:

CPUC Energy Division  
Tariff Files, Room 4005  
DMS Branch  
505 Van Ness Avenue  
San Francisco, California 94102

Facsimile: (415) 703-2200  
E-mail: jnj@cpuc.ca.gov and mas@cpuc.ca.gov

Copies of protests also should be mailed to the attention of the Director, Energy Division, Room 4004, at the address shown above.

The protest also should be sent via U.S. mail (and by facsimile and electronically, if possible) to PG&E at the address shown below on the same date it is mailed or delivered to the Commission:

Jane K. Yura  
Vice President, Regulations and Rates  
Pacific Gas and Electric Company  
77 Beale Street, Mail Code B10B  
P.O. Box 770000  
San Francisco, California 94177

Facsimile: (415) 973-6520  
E-mail: PGETariffs@pge.com

**Effective Date**

PG&E requests that this advice filing become effective on regular notice, **May 5, 2010**, which is 30 calendar days after the date of filing.

**Notice**

In accordance with General Order 96-B, Section IV, a copy of this advice letter is being sent electronically and via U.S. mail to parties shown on the attached list. Address changes to the General Order 96-B service list and all electronic approvals should be directed to email PGETariffs@pge.com. Advice letter filings can also be accessed electronically at: <http://www.pge.com/tariffs>.

*Jane Yura - OB*

Vice President, Regulation and Rates

cc: Karin M. Marubito, Office of the San Jose City Attorney

Attachments:

Attachment A: Representative PG&E Sample Bills

Attachment B: City of San Jose's Gas and Electric Franchise Agreements

# CALIFORNIA PUBLIC UTILITIES COMMISSION

## ADVICE LETTER FILING SUMMARY ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No. **Pacific Gas and Electric Company (ID U39 M)**

Utility type:

☒ ELC

☒ GAS

☐ PLC

☐ HEAT

☐ WATER

Contact Person: Olivia Brown

Phone #: 415.973.9312

E-mail: [oxb4@pge.com](mailto:oxb4@pge.com)

### EXPLANATION OF UTILITY TYPE

ELC = Electric

GAS = Gas ☐

PLC = Pipeline

HEAT = Heat

WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: 3110-G/3651-E

**Tier:** 2

Subject of AL: 0.3% Franchise Surcharge for Gas and Electric Customers within the City of San Jose

Keywords (choose from CPUC listing): Compliance

AL filing type: ☐ Monthly ☐ Quarterly ☐ Annual ☒ One-Time ☐ Other \_\_\_\_\_

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #: N/A

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: No

Summarize differences between the AL and the prior withdrawn or rejected AL: N/A

Is AL requesting confidential treatment? If so, what information is the utility seeking confidential treatment for: No

Confidential information will be made available to those who have executed a nondisclosure agreement: N/A

Name(s) and contact information of the person(s) who will provide the nondisclosure agreement and access to the confidential information: N/A

Resolution Required? ☐ Yes ☒ No

Requested effective date: May 5, 2010

No. of tariff sheets: N/A

Estimated system annual revenue effect (%): N/A

Estimated system average rate effect (%): N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting). N/A

Tariff schedules affected: N/A

Service affected and changes proposed: N/A

Protests, dispositions, and all other correspondence regarding this AL are due no later than 20 days after the date of this filing, unless otherwise authorized by the Commission, and shall be sent to:

**CPUC, Energy Division**

**Tariff Files, Room 4005**

**DMS Branch**

**505 Van Ness Ave., San Francisco, CA 94102**

**[gnj@cpuc.ca.gov](mailto:gnj@cpuc.ca.gov) and [mas@cpuc.ca.gov](mailto:mas@cpuc.ca.gov)**

**Pacific Gas and Electric Company**

**Attn: Jane K. Yura, Vice President, Regulation and Rates**

**77 Beale Street, Mail Code B10B**

**P.O. Box 770000**

**San Francisco, CA 94177**

**E-mail: [PGETariffs@pge.com](mailto:PGETariffs@pge.com)**



# **Advice 3110-G/3651-E**

## **Attachment A: Representative PG&E Sample Bills**



Pacific Gas and  
Electric Company

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## Energy Statement

99901234567890100000059700000005970

Account Number	Bill Date	Amount Due	Due Date	Amount Enclosed
1234567890-1	08/23/2010	\$59.70	08/23/2010	

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JANE SAMPLE – G1/E1 – Residential Service  
123 JAMESTOWN  
SAN JOSE CA 99999-1000

PG&E  
BOX 997300  
SACRAMENTO CA  
95899-7300

201.1205

Please return this portion with your payment. Thank you.

### Telephone Assistance

1-800-743-5000  
Assistance is available by  
telephone 24 hours per day,  
7 days per week.

### Local Office Address

123 MAIN STREET  
SAN JOSE CA 99999

### Account Number

1234567890-1

August 2010

### ACCOUNT SUMMARY

Service	Service Dates	Amount
Gas	07/01/2010 To 08/01/2010	\$28.45
Electric	07/01/2010 To 08/01/2010	26.25
Energy Commission Tax		0.05
Gas PPP Surcharge		2.04
Utility Users' Tax		2.74
San Jose Franchise Surcharge *see note*		0.17
<b>TOTAL CURRENT CHARGES</b>		<b>\$59.70</b>
Previous Balance		65.00
06/15 Payment – Thank You		65.00-

**TOTAL AMOUNT DUE \$59.70**  
**DUE DATE – 08/23/2010**

Information on the San Jose Franchise Surcharge is available by contacting the City of San Jose Customer Service at (408) 535-3500.

Form 01-6630  
Advice 2626-E-B  
Revised February 2005



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Page 1 of 4

Form 01-6630/9/96



Pacific Gas and  
Electric Company

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JANE SAMPLE

123 JAMESTOWN  
SAN JOSE CA 99999 - 1000

#### GAS ACCOUNT DETAIL

Service ID# : 2468024680  
Rate Schedule: G1 \_ Residential Service  
Billing Days: xx days

Serial	Meter #	Prior Meter Read	Current Meter Read	Difference	Multiplier	Usage
H	1212A1	47	77	30	1.016900	31 Therms

#### Charges

##### 07/18/2010 - 07/31/2010

Gas Charges						\$12.07
Baseline Quantity			25.06000 Therms			
Baseline Usage			13.15152 Therms @	\$0.91778		
Net Charges						\$12.07

PG&E's Gas Procurement Cost (Rate Schedule G-CP) is \$0.5212 / therm

#### Taxes and Other

Gas PPP Surcharge (\$0.06535 / therm)	\$0.87
Utility Users' Tax (5.000%)	0.60
San Jose Franchise Surcharge	0.04

#### Charges

##### 08/01/2010 - 08/19/2010

Gas Charges						\$16.38
Baseline Quantity			34.01000 Therms			
Baseline Usage			17.84849 Therms @	\$0.91778		
Net Charges						\$16.38

PG&E's Gas Procurement Cost (Rate Schedule G-CP) is \$0.5212 / therm

#### Taxes and Other

Gas PPP Surcharge (\$0.06535 / therm)	\$1.17
Utility Users' Tax (5.000%)	0.82
San Jose Franchise Surcharge	0.05

#### TOTAL CHARGES

**\$32.00**

Usage Comparison	Days Billed	Therms Billed	Therms per Day
This Year	33	31	0.9
Last Year	N/A	N/A	N/A



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1234567890-1  
Page 3 of 4

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JANE SAMPLE

### ELECTRIC ACCOUNT DETAIL

Service ID#: 1357913579  
Rate Schedule: E1 TB Residential Service  
Billing Days: xx days

Serial	Rotating Outage Blk	Meter #	Prior Meter Read	Current Meter Read	Difference	Meter Constant	Usage
H	13H	63L788	58,145	58,366	221	1	221 Kwh

#### Charges

07/18/2010 – 08/19/2010

Electric Charges		\$26.25
Baseline Quantity	313.60000 Kwh	
Baseline Usage	221.00000 Kwh @ \$0.11877	
Net Charges		\$26.25

The net charge shown above include the following component(s). Please see definitions on Page 2 of the bill.

Generation	\$9.93
Transmission	2.17
Distribution	8.19
Public Purpose Programs	2.72
Nuclear Decommissioning	0.06
DWR Bond Charge	1.14
Ongoing CTC	1.23
Energy Cost Recovery Amount	0.81

#### Taxes and Other

Energy Commission Tax	\$ 0.05
Utility Users' Tax (5.000%)	1.32
San Jose Franchise Surcharge	0.08

#### TOTAL CHARGES

**\$27.70**

Usage Comparison	Days Billed	Kwh Billed	Kwh per Day
This Year	33	221	6.9
Last Year	N/A	N/A	N/A

Rotating outage blocks are subject to change without advance notice due to operational conditions.

Generation includes charges for the portion of your energy usage provided by the Department of Water Resources (DWR) and is being collected by PG&E as an agent for DWR. DWR is collecting x.xxx cents per kWh from bundled customers for each kWh it provides plus the Power Charge Indifference Adjustment component of the Cost Responsibility Surcharge from direct access and transitional bundled customers.

The rates shown above are applicable to bundled service customers. Direct Access and Community Choice Aggregation customers pay only a portion of these rates. Please see the appropriate rate schedule for the applicable charges.



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1234567890-1  
Page 4 of 4

Form 37 6632 3/06



Pacific Gas and  
Electric Company

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## Energy Statement

9990123456789010000004937000004937

Account Number	Bill Date	Amount Due	Due Date	Amount Enclosed
1234567890-1	07/30/2010	\$49.37	08/23/2010	

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JANE SAMPLE – E1-DA-Residential-Continuous  
123 JAMESTOWN  
SAN JOSE CA 99999-1000

PG&E  
BOX 997300  
SACRAMENTO CA  
95899-7300

200.0037

Please return this portion with your payment. Thank you.

### Telephone Assistance

1-800-743-5000  
Assistance is available by  
telephone 24 hours per day,  
7 days per week.

### Local Office Address

123 MAIN STREET  
SAN JOSE CA 99999

### Account Number

1234567890-1

July 2010

### ACCOUNT SUMMARY

Service	Service Dates	Amount
Electric	07/01/2010 To 07/30/2010	\$46.89
Utility Users' Tax		2.34
San Jose Franchise Surcharge *see note*		0.14
TOTAL CURRENT CHARGES		\$49.37
Previous Balance		48.31
07/19 Payment – Thank You		48.31-

**TOTAL AMOUNT DUE \$49.37**  
**DUE DATE – 08/23/2010**

Information on the San Jose Franchise Surcharge is available by contacting the City of San Jose Customer Service at (408) 535-3500.



PAGE 1 of 3

Form 07-0803-0000



Pacific Gas and  
Electric Company

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JANE SAMPLE

123 JAMESTOWN  
SAN JOSE 99999-10000

### ELECTRIC ACCOUNT DETAIL

Service ID# : 1357913579  
Rate Schedule: E1 TB Residential Service  
Billing Days: 30 days

Serial	Rotating Outage Blk	Meter #	Prior Meter Read	Current Meter Read	Difference	Meter Constant	Usage
M	10	63L788	61,553	62,093	540	1	540 Kwh

#### Charges

##### 07/01/2010 – 07/30/2010

Electric Charges		\$42.50
Baseline Quantity	246.00000 Kwh	
Baseline Usage	246.00000 Kwh @ \$0.05550	
101-130% of Baseline	73.80000 Kwh @ \$0.06245	
131-200% of Baseline	172.20000 Kwh @ \$0.10207	
201-300% of Baseline	48.00000 Kwh @ \$0.13870	
Over 300% of Baseline	0.00000 Kwh @ \$0.15789	
DA CRS		4.30
DA CRS Exemption		0.24-
Franchise Fee Surcharge		0.33
Net Charges		\$46.89

The net charge shown above include the following component(s). Please see definitions on Page 2 of the bill.

Transmission	\$4.29
Distribution	31.91
Public Purpose Programs	6.15
Nuclear Decommissioning	0.15
Ongoing CTC	2.35
Energy Cost Recovery Amount	1.71
Franchise Fee Surcharge	0.33

#### Taxes and Other

Utility Users' Tax (5.000%)	2.34
San Jose Franchise Surcharge	0.14

#### TOTAL CHARGES

**\$49.17**

Usage Comparison	Days Billed	Kwh Billed	Kwh per Day
This Year	30	540	18.0
Last Year	30	540	18.0

Rotating outage blocks are subject to change without advance notice due to operational conditions.

Generation includes charges for the portion of your energy usage provided by the Department of Water Resources (DWR) and is being collected by PG&E as an agent for DWR. DWR is collecting x.xxx cents per kWh from bundled customers for each kWh it provides plus the Power Charge component of the Cost Responsibility Surcharge from direct access and transitional bundled service customers.

The rates shown above are applicable to bundled service customers. Direct Access and Community Choice Aggregation customers pay only a portion of these rates. Please see the appropriate rate schedule for the applicable charges.



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1234567890-1  
Page 3 of 3

Form 07-0000 0/00





Pacific Gas and  
Electric Company

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## Energy Statement

99901234567890100000049630000004963

Account Number	Bill Date	Amount Due	Due Date	Amount Enclosed
1234567890-1	07/30/2010	\$49.63	08/23/2010	

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JANE SAMPLE – E1 – Residential Service – DA – Non-Continuous  
123 JAMESTOWN  
SAN JOSE CA 95099-1000

PG&E  
BOX 997300  
SACRAMENTO CA  
95899-7300

200.0037

Please return this portion with your payment. Thank you.

### Telephone Assistance

1-800-743-5000  
Assistance is available by  
telephone 24 hours per day,  
7 days per week.

### Local Office Address

123 MAIN STREET  
SAN JOSE CA 95099-1000

### Account Number

1234567890-1

July 2010

### ACCOUNT SUMMARY

Service	Service Dates	Amount
Electric	07/01/2010 To 07/30/2010	\$47.13
Utility Users' Tax		2.36
San Jose Franchise Surcharge *see note*		.14
TOTAL CURRENT CHARGES		\$49.63
Previous Balance		48.29
07/13 Payment – Thank You		48.29

**TOTAL AMOUNT DUE \$49.63**  
**DUE DATE – 08/23/2010**

Information on the San Jose Franchise Surcharge is available by contacting the City of San Jose Customer Service at (408) 535-3500.



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35% Post Consumer Waste

PAGE 1 of 3

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Pacific Gas and  
Electric Company

WE DELIVER ENERGY.™

JANE SAMPLE

123 JAMESTOWN  
SAN JOSE CA 95099 - 1000

### ELECTRIC ACCOUNT DETAIL

Service ID#: 1357913579  
Rate Schedule: E1 TB Residential Service  
Billing Days: 30 days

Serial	Rotating Outage Blk	Meter #	Prior Meter Read	Current Meter Read	Difference	Meter Constant	Usage
M	10	63L788	61,553	62,093	1,000	1	540 Kwh

#### Charges

07/01/2010 - 07/30/2010

Electric Charges		\$42.50
Baseline Quantity	246.00000 Kwh	
Baseline Usage	246.00000 Kwh @ \$0.05550	
101-130% of Baseline	73.80000 Kwh @ \$0.06245	
131-200% of Baseline	172.20000 Kwh @ \$0.10207	
201-300% of Baseline	48.00000 Kwh @ \$0.13870	
Over 300% of Baseline	0.00000 Kwh @ \$0.15789	
DA CRS		4.30
Franchise Fee Surcharge		0.33
Net Charges		\$47.13

The net charge shown above include the following component(s). Please see definitions on Page 2 of the bill.

Transmission	\$ 4.29
Distribution	31.91
Public Purpose Programs	6.15
Nuclear Decommissioning	0.15
DWR Bond Charge	2.57
Power Charge Indifference Adj.	-2.33
Ongoing CTC	2.35
Energy Cost Recovery Amount	1.71
Franchise Fee Surcharge	0.33

#### Taxes and Other

Utility Users' Tax (5.000%)	\$2.36
San Jose Franchise Surcharge	.14

#### TOTAL CHARGES

**\$49.63**

Usage Comparison	Days Billed	Kwh Billed	Kwh per Day
This Year	30	540	18.0
Last Year	30	540	18.0

Rotating outage blocks are subject to change without advance notice due to operational conditions.

Generation includes charges for the portion of your energy usage provided by the Department of Water Resources (DWR) and is being collected by PG&E as an agent for DWR. DWR is collecting x.xxx cents per kWh from bundled customers for each kWh it provides plus the Cost Responsibility Surcharge from direct access and transitional bundled service customers.

The rates shown above are applicable to bundled service customers. Direct Access and Community Choice Aggregation customers pay only a portion of these rates. Please see the appropriate rate schedule for the applicable charges.



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30% Post-Consumer Waste

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Page 3 of 3

FORM 27-REG-9/00





Pacific Gas and  
Electric Company

WE DELIVER ENERGY.™

## Energy Statement

99901234567890100000752930000075293

Account Number	Bill Date	Amount Due	Due Date	Amount Enclosed
1234567890-1	07/30/2010	\$752.93	08/23/2010	

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JANE SAMPLE – GNR1/A1 Small Commercial  
123 JAMESTOWN  
SAN JOSE CA 99999-1000

PG&E  
BOX 997300  
SACRAMENTO CA  
95899-7300

200.0485

Please return this portion with your payment. Thank you.

### Telephone Assistance

1-800-743-5000  
Assistance is available by  
telephone 24 hours per day,  
7 days per week.

### Local Office Address

123 MAIN STREET  
SAN JOSE CA 99999

### Account Number

1234567890-1

July 2010

### ACCOUNT SUMMARY

Service	Service Dates	Amount
Gas	07/01/2010 To 07/30/2010	\$586.31
Electric	07/01/2010 To 07/30/2010	111.49
Gas PPP Surcharge		17.98
Energy Commission Tax		0.17
Utility Users' Tax		34.89
San Jose Franchise Surcharge *see note*		2.09
<b>TOTAL CURRENT CHARGES</b>		<b>\$752.93</b>
Previous Balance		759.30
07/20 Payment – Thank You		759.30-

**TOTAL AMOUNT DUE \$752.93**  
**DUE DATE – 08/23/2010**

Information on the San Jose Franchise Surcharge is available by contacting the City of San Jose Customer Service at (408) 535-3500.





Pacific Gas and  
Electric Company

WE DELIVER ENERGY.™

JANE SAMPLE

123 JAMESTOWN  
BAKERSFIELD 9999-1000

#### GAS ACCOUNT DETAIL

Service ID# : 2468024680  
Rate Schedule: GNR1 Gas Service to Small Commercial Customers  
Billing Days: 30 days

Serial	Meter #	Prior Meter Read	Current Meter Read	Difference	Multiplier	Usage
F	1212A1	42,473	42,673	500	1.001000	500 Therms

#### Charges

07/01/2010 – 07/30/2010

Gas Charges \$586.31  
Net Charges \$586.31

PG&E's Gas Procurement Cost (Rate Schedule G-CP) is \$0.86531/therm

#### Taxes and Other

Gas PPP Surcharge (\$0.03595/therm) \$17.98  
Utility Users' Tax (5.000%) 29.32  
San Jose Franchise Surcharge 1.76

#### TOTAL CHARGES

**\$635.37**

Usage Comparison	Days Billed	Therms Billed	Therms per Day
This Year	30	500	16.7
Last Year	30	500	16.7



Recycled Paper  
30% Post-Consumer Waste

1234567890-1  
Page 3 of 4

Form 511 6/03/09



Pacific Gas and  
Electric Company

WE DELIVER ENERGY.™

JANE SAMPLE

#### ELECTRIC ACCOUNT DETAIL

Service ID# : 2468024680  
Rate Schedule: A1 Small General Service  
Billing Days: 30 days

Serial	Rotating Outage Blk	Meter #	Prior Meter Read	Current Meter Read	Difference	Meter Constant	Usage
X	50	2424A1	72,138	72,931	793	1	793 Kwh

#### Charges

07/01/2010 – 07/30/2010

Electric Charges	\$111.49	
Net Charges		\$111.49

The net charges shown above include the following component(s). Please see definitions on Page 2 of the bill.

Generation	\$49.62
Transmission	6.28
Distribution	35.93
Public Purpose Programs	9.68
Nuclear Decommissioning	0.21
DWR Bond Charge	3.78
Ongoing CTC	3.47
Energy Cost Recovery Amount	2.52

#### Taxes and Other

Energy Commission Tax	\$0.17
Utility Users' Tax (5.000%)	5.57
San Jose Franchise Surcharge	.33

#### TOTAL CHARGES

**\$117.56**

Usage Comparison	Days Billed	Kwh Billed	Kwh Per Day
This Year	30	793	26.4
Last Year	30	588	19.6

Rotating outage blocks are subject to change without advance notice due to operational conditions.

Generation includes charges for the portion of your energy usage provided by the Department of Water Resources (DWR) and is being collected by PG&E as an agent for DWR. DWR is collecting x.xxx cents per kWh from bundled customers for each kWh it provides plus the Power Charge component of the Cost Responsibility Surcharge from direct access and transitional bundled service customers.

The rates shown above are applicable to bundled service customers. Direct access and Community Choice Aggregation customers pay only a portion of these rates. Please see the appropriate rate schedule for the applicable charges.



Recycled Paper  
30% Post-Consumer Waste

1234567890-1  
Page 3 of 4

Form 17-BB(12-9-09)



Pacific Gas and  
Electric Company

WE DELIVER ENERGY.™

Energy Statement

99901234567890100000096149000096149

Account Number	Bill Date	Amount Due	Due Date	Amount Enclosed
1234567890-1	07/30/2010	\$961.49	08/23/2010	

001:4.90.14462 1 AV 0.238



JANE SAMPLE – A10 Medium General Demand Metered Service  
123 JAMESTOWN  
SAN JOSE CA 95099-1000

PG&E  
BOX 997300  
SACRAMENTO CA  
95899-7300

201.1205

Please return this portion with your payment. Thank you.

Telephone Assistance

1-800-743-5000  
Assistance is available by  
telephone 24 hours per day,  
7 days per week.

Local Office Address

123 MAIN STREET  
SAN JOSE CA 95099

Account Number

1234567890-1

July 2010

ACCOUNT SUMMARY

Service	Service Dates	Amount
Electric	07/01/2010 To 07/30/2010	\$912.15
Energy Commission Tax		0.99
Utility Users' Tax		45.61
San Jose Franchise Surcharge *see note*		2.74
TOTAL CURRENT CHARGES		\$961.49
Previous Balance		940.38
07/20 Payment – Thank You		940.38-

**TOTAL AMOUNT DUE \$961.49**  
**DUE DATE – 08/23/2010**

Information on the San Jose Franchise Surcharge is available by contacting the City of San Jose Customer Service at (408) 535-3500.



Recycled Paper  
30% Post Consumer Waste

Page 1 of 3

Form 07-0000-0000



Pacific Gas and  
Electric Company

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JANE SAMPLE

123 JAMESTOWN  
SAN JOSE CA 95131-1000

#### ELECTRIC ACCOUNT DETAIL

Service ID# : 1357913579  
Rate Schedule: A10S Medium General Demand-Metered Service  
Billing Days: 30 days

Serial	Rotating Outage Blk	Meter #	Prior Meter Read	Current Meter Read	Difference	Meter Constant	Usage
R	50	1212A1	14,700	19,200	4,500	1.0000	4,500 Kwh

#### Charges

07/01/2010 – 07/30/2010

Electric Charges \$912.15  
Net Charges \$912.15

The net charge shown above include the following component(s). Please see definitions on Page 2 of the bill.

Generation	\$268.52
Transmission	202.48
Distribution	336.53
Public Purpose Programs	48.78
Nuclear Decommissioning	1.22
DWR Bond Charge	21.47
Ongoing CTC	18.86
Energy Cost Recovery Amount	14.31

#### Taxes and Other

Energy Commission Tax \$0.99  
Utility Users' Tax (5.000%) 45.61  
San Jose Franchise Surcharge 2.74

#### Demand Detail

Billing Demand Summer 80

#### TOTAL CHARGES

**\$961.84**

Usage Comparison	Days Billed	Kwh Billed	Kwh per Day
This Year	30	4,500	150.0
Last Year	30	4,000	133.3

Rotating outage blocks are subject to change without advance notice due to operational conditions.

Generation includes charges for the portion of your energy usage provided by the Department of Water Resources (DWR) and is being collected by PG&E as an agent for DWR. DWR is collecting x.xxx cents per kWh from bundled customers for each kWh it provides plus the Power Charge component of the Cost Responsibility Surcharge from direct access and transitional bundled service customers.

The rates shown above are applicable to bundled service customers. Direct Access and Community Choice Aggregation customers pay only a portion of these rates. Please see the appropriate rate schedule for the charges applicable to direct access.



Recycled Paper  
30% Post-Consumer Waste

1234567890-1  
Page 3 of 3

Form 11 06/21/08





Pacific Gas and  
Electric Company

WE DELIVER ENERGY.™

## Energy Statement

9990123456789010000996820000996820

Account Number	Bill Date	Amount Due	Due Date	Amount Enclosed
1234567890-1	07/30/2010	\$9,968.20	08/23/2010	

001:4.90.14462 1 AV 0.238



JANE SAMPLE – E19 Med/Large General Demand Metered TOU Service  
123 JAMESTOWN  
SAN JOSE CA 99999-1000

PG&E  
BOX 997300  
SACRAMENTO CA  
95899-7300

200.0037

Please return this portion with your payment. Thank you.

### Telephone Assistance

1-800-743-5000  
Assistance is available by  
telephone 24 hours per day,  
7 days per week.

### Local Office Address

123 JAMESTOWN  
SAN JOSE CA 99999-1000

### Account Number

1234567890-1

July 2010

### ACCOUNT SUMMARY

Service	Service Dates	Amount
Electric	07/01/2010 To 07/30/2010	\$9,446.42
Energy Commission Tax		21.12
Utility Users' Tax		472.32
San Jose Franchise Surcharge *see note*		28.34
TOTAL CURRENT CHARGES		\$9,968.20
Previous Balance		9,932.60
07/22 Payment – Thank You		9,932.60

**TOTAL AMOUNT DUE** **\$9,968.20**  
**DUE DATE – 08/23/2010**

Information on the San Jose Franchise Surcharge is available by contacting the City of San Jose  
Customer Service at (408) 535-3500.



Recycled Paper  
100% Post Consumer Waste

PAGE 1 of 3

Form 127-6000-10-00



Pacific Gas and  
Electric Company

WE DELIVER ENERGY.™

JANE SAMPLE  
123 JAMESTOWN  
SAN JOSE CA 9999-1000

### ELECTRIC ACCOUNT DETAIL

Service ID# : 2468024680  
Rate Schedule: E19S Medium General Demand-Metered TOU Service  
Billing Days: 30 days

Serial	Rotating Outage Blk	Meter #	Prior Meter Read	Current Meter Read	Difference	Meter Constant	Usage
R	14R	1212A1	18,405	19,205	800	120	96,000 kWh
R	14R	1212A1	11,200	11,600	400	120	48,000 Reactive

89.00 % Power Factor = - 0.24 % Adjustment

#### Charges

07/01/2010 - 07/30/2010

Electric Charges	\$9,484.82	
Power Factor Adjustment	19.20	
Net Charges		\$9,446.42

The net charges shown above include the following component(s). Please see definitions on Page 2 of the bill.

Generation	\$4,993.92
Transmission	551.06
Distribution	1,799.99
Public Purpose Programs	981.12
Nuclear Decommissioning	25.92
DWR Bond Charge	457.92
Ongoing CTC	331.20
Energy Cost Recovery Amount	305.28

#### Taxes and Other

Energy Commission Tax	\$21.12
Utility Users' Tax (5.000%)	472.32
San Jose Franchise Surcharge	28.34

#### Time of Use Detail

Season: Winter	Energy
Partial Peak	38,400 @ \$0.08264
Off-Peak	57,600 @ \$0.07296
Season: Winter	Demand
Partial-Peak	209 @ \$1.920000
Off-Peak	223 @ \$6.320000

#### TOTAL CHARGES

**\$9,968.20**

Usage Comparison	Days Billed	Kwh Billed	Kwh Per Day
This Year	30	96,000	3,200.0
Last Year	30	87,802	2,926.7

Rotating outage blocks are subject to change without advance notice due to operational conditions.

Generation includes charges for the portion of your energy usage provided by the Department of Water Resources (DWR) and is being collected by PG&E as an agent for DWR. DWR is collecting x.xxx cents per kWh from bundled customers for each kWh it provides plus the Power Charge component of the Direct Access Cost Responsibility Surcharge from direct access customers.

The rates shown above are applicable to bundled service customers. Direct Access and Community Choice Aggregation customers pay only a portion of these rates. Please see the appropriate rate schedule for the applicable charges.



Recycled Paper  
50% Post Consumer  
Waste

Form 57-8852-0101

1234567890-1  
Page 3 of 3

# **Advice 3110-G/3651-E**

## **Attachment B: City of San Jose's Gas and Electric Franchise Agreements**



## Gas Franchise

Ordinance 15879 (adopted September 20, 1971)

Ordinance 21676 (adopted June 5, 1984)

Ordinance 26913 (adopted June 10, 2003)

Ordinance 28719 (adopted February 9, 2010)

PEP:lb-lc  
7/23/71  
Rev. 9/16/71

ORDINANCE NO. 15879

AN ORDINANCE OF THE CITY OF SAN JOSE GRANTING TO PACIFIC GAS AND ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE (1) TO USE, FOR CONDUCTING AND DISTRIBUTING GAS SUITED FOR LIGHTING BUT FOR USE BY CONSUMERS FOR ANY AND ALL LAWFUL PURPOSES OTHER THAN LIGHTING, ALL PIPES AND APPURTENANCES WHICH ARE NOW OR MAY HEREAFTER BE LAWFULLY PLACED AND MAINTAINED IN THE STREETS WITHIN THE CITY OF SAN JOSE UNDER SUCH FRANCHISE THAT GRANTEE MAY HAVE UNDER AND PURSUANT TO SECTION 19 OF ARTICLE XI OF THE CONSTITUTION OF THE STATE OF CALIFORNIA, AS SAID SECTION EXISTED PRIOR TO ITS AMENDMENT ON OCTOBER 10, 1911, (2) TO CONSTRUCT, MAINTAIN AND USE IN SAID STREETS ALL PIPES AND APPURTENANCES WHENEVER AND WHEREVER SAID CONSTITUTIONAL FRANCHISE IS NOT NOW OR HEREAFTER AVAILABLE THEREFOR, NECESSARY TO CONDUCT AND DISTRIBUTE GAS SUITED FOR, AND FOR USE BY CONSUMERS FOR, ANY AND ALL LAWFUL PURPOSES, AND (3) TO UTILIZE SAID PIPES AND APPURTENANCES IN SAID STREETS FOR CONDUCTING AND DISTRIBUTING FOR USE OUTSIDE THE BOUNDARIES OF THE CITY FOR ANY AND ALL LAWFUL PURPOSES, AND PROVIDING THE TERMS AND CONDITIONS OF THE FRANCHISE SO GRANTED.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Definitions. Wherever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions (unless in a given instance the context wherein they are used shall clearly import a different meaning):

(a) The word "Grantee" shall mean Pacific Gas and Electric Company, and its lawful successors or assigns.

(b) The word "City" shall mean the City of San Jose, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or re-incorporated form.

(c) The word "Engineer" shall mean such officer as may from time to time be designated by the Council of the City of San Jose or its successor, as the Engineer referred to in this ordinance; provided,

that until otherwise provided by said Council or its successor, the word "Engineer" shall mean the head of the Public Works Department of the City of San Jose.

(d) The word "streets" shall mean the public streets, ways, alleys and places now or hereafter established within the City, including State highways and freeways now or hereafter established within the City; provided and excepting, however, that the word "streets" shall not be deemed to mean or include any parks, playgrounds, school property or other municipal or public property not constituting public thoroughfares.

(e) The word "gas" shall mean natural or artificial gas, or a mixture of both.

(f) The words "pipes and appurtenances" shall mean pipes, pipelines, mains, services, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, appliances, attachments, appurtenances and, without limitation to the foregoing, any other property located or to be located in, upon, along, across, under or over the streets of City, used or useful in transmitting and/or distributing gas for the purpose for which this franchise is granted.

(g) The words "construct, maintain and use" shall mean to construct, erect, install, operate, maintain, use, repair or replace.

(h) The phrase "constitutional franchise" shall mean such franchise or right, if any, as Grantee may have because of the acceptance by Grantee or its predecessor in estate of the offer contained in the provisions of Section 19 of Article XI of the Constitution of the State of California, as said Section existed prior to its amendment on October 10, 1911.

(i) The phrase "gross receipts", as used in this Section and in other parts of this ordinance, shall mean all gross operating revenues received or receivable by Grantee from the sale of gas to Grantee's customers with points of service within the corporate limits of the City (including, but not limited to, sales to military reservations with points

of service within the City's corporate limits) which are credited to Account Nos. 480, 481 and 482 of the current Uniform System of Accounts of the Federal Power Commission, as adopted by the California Public Utilities Commission, or similar superseding accounts, or which would be credited to such accounts or similar superseding accounts if Grantee kept its books in accordance with such accounts or similar superseding accounts.

SECTION 2. Purpose. Subject to each and all of the terms, conditions and limitations set forth in this ordinance, there is hereby granted to Grantee the franchise to do all of the following:

(a) To use, for transmitting and distributing gas suited for lighting but for use by consumers for any and all lawful purposes other than lighting, all pipes and appurtenances which are now or may hereafter be lawfully placed and maintained in the streets within the City under the constitutional franchise of the Grantee;

(b) To construct, maintain and use in said streets within the City all pipes and appurtenances whenever and wherever the constitutional franchise of Grantee is not now or hereafter available therefor, necessary to transmit and distribute gas suited for, and for use by consumers for, any and all lawful purposes; and

(c) To utilize said pipes and appurtenances in said streets for transmitting gas for use outside the boundaries of City for any and all lawful purposes.

SECTION 3. Term. Subject to all terms, conditions and limitations contained in this ordinance, the franchise granted by this ordinance shall endure in full force and effect until the same shall, with the consent of the Public Utilities Commission of the State of California, be voluntarily surrendered or abandoned by Grantee, or until the State or any of its political subdivisions or agencies, or the City of San Jose or any municipal or public corporation, thereunto duly authorized by law shall purchase by voluntary agreement or shall condemn and take under the power of eminent domain, all property actually used and useful in the exercise of said franchise and situate in the territorial limits of the State, municipal or public corporation purchasing or condemning such

property, or until said franchise shall be forfeited for noncompliance with its terms or until said franchise is otherwise forfeited, terminated or abandoned pursuant to any of the provisions of this ordinance or pursuant to any applicable law.

SECTION 4. Consideration. The franchise, and all rights and privileges, granted by this ordinance to Grantee are granted upon the express condition that Grantee, in consideration thereof and as compensation for the use of the streets of the City as herein authorized and permitted, shall pay to the City, in lawful money of the United States, in the manner and on the conditions hereinafter set forth in Section 5, for each of the calendar years (or fractional calendar years) following the effective date of this ordinance, a sum of money equal to one percent (1%) of Grantee's gross receipts during each such calendar year (or fractional calendar year); provided and excepting, however, that the amount of said annual compensation, and/or the formula or measure or manner in which the amount shall be determined, may be changed or amended as hereinafter provided in this Section, to wit:

(a) If, as a result of negotiation or litigation, or both, between Grantee and any other city or cities of the State of California, regardless of whether such other city or cities is or are a general law or charter city or cities, including but not limited to negotiation or litigation, or both, under any hereafter adopted statute or constitutional amendment, or if by litigation, whether the City participates therein or not, which right of participation is hereby expressly reserved to the City, or if for any other reason, the Grantee shall make payment or payments to any other city for any of said calendar years (or fractional calendar years) in accordance with a formula (hereinafter referred to as a "second formula") which if applied to the City would provide payments to the City greater than provided for by the use of the formula hereinabove specified in the first paragraph of this Section 4, such

"second formula" shall prevail over the formula hereinabove specified in the first paragraph of this Section 4 for each of said years of the term of said franchise for or during which Grantee makes payments to any other city in accordance with said "second formula".

(b) In the event that the laws of the State of California, as they exist as of the date of adoption of this ordinance, should at any time ever be amended or changed to permit general law cities, in granting franchises of the kind herein being granted to Grantee, to require the Grantee of any such franchise to pay or give any consideration or compensation in accordance with a formula (hereinafter referred to as "third formula") which, if applied to the City of San Jose and the Grantee herein, would provide payments to the City greater than provided for by the use of the formula hereinabove specified in the first paragraph of this Section 4 or by the use of the abovementioned "second formula" if such "second formula" is the higher, than in such event City shall have the right, at any time thereafter, to require Grantee to thereafter make payments in accordance with such "third formula"; provided, however, that City shall not require Grantee to make any payments pursuant to the provisions of this subparagraph (b) during the first thirty (30) years of the franchise herein granted by City to Grantee.

(c) Within the last six (6) calendar months of the calendar year 1981, and thereafter within the last six (6) calendar months of each ten (10) calendar year period following the calendar year 1981, each of such six (6) month periods being hereinafter referred to as "six-month-notice period", either City or Grantee, or each of them, may serve written notice upon the other of its desire to change the amount or kind of consideration or compensation to be annually paid or given, after the expiration of such "six-month-notice period", by Grantee to City as consideration for said franchise and as compensation for the use by Grantee of the streets of the City as herein authorized and permitted, or of its

desire to change the manner, measure or formula pursuant to which such annual consideration and compensation shall thereafter be determined. Said notice shall specify the change or changes desired. Within ninety (90) days from and after the date of service of such notice, or at such other time or times as the parties may mutually agree upon, City and Grantee shall meet and confer and attempt in good faith to resolve the matters at issue by mutual agreement. No such agreement shall be effective unless it is in writing, and unless it is approved and signed by both City and Grantee. No such agreement shall be deemed approved by City unless it shall have been approved and authorized by written ordinance adopted by the governing body of the City. Unless otherwise provided in the agreement, any change or changes agreed upon in any such agreement shall be effective from and after the commencement of the calendar year immediately following the expiration of the "six-month-notice period".

In the event that City and Grantee should fail to arrive at any agreement with respect to the proposed change or changes within ninety (90) days from and after the service of the abovementioned notice, either party may thereafter serve upon the other a written notice of its intent to present the proposed change or changes to a board of arbitration for its consideration and decision. Unless otherwise agreed to by both parties, said notice must be served no later than the 30th day of June next following the expiration of the above-mentioned "six-month-notice period".

The board of arbitration shall consist of seven (7) members, two (2) to be selected by the City, and two (2) to be selected by the Grantee. The four (4) arbitrators selected by the parties shall select three (3) neutral arbitrators. Within thirty (30) days after service of said notice of intent to submit said matter to arbitration, each of



the parties, respectively, shall select its two (2) members of the board, and within thirty (30) days after the four are selected, they shall select the three (3) neutral arbitrators. The board of arbitration shall then consider the proposed change or changes, and, after giving both parties a reasonable opportunity to be heard, shall determine what change or changes, if any, are to be made. The change or changes, if any, ordered by the board may differ from those requested or desired by either of the parties. The determination shall be fair and reasonable to both parties, and in arriving at it, the board shall consider the nature and value of the rights and privileges granted by this ordinance to the Grantee, the costs, expenses and damages, if any, which City has or will incur or suffer because of the grant of said rights and privileges to Grantee or because of Grantee's exercise of such rights and privileges, the amount paid to comparable cities for similar franchise rights and any and all other relevant factors. The board's determination shall be in writing, shall be by the majority vote of its seven (7) members, and shall be final and conclusive and binding upon both parties. The board shall render its written decision on or before, and no later than, the last day of the first twelve (12) calendar months immediately following the expiration of the abovementioned "six-month-notice period". Any change or changes made by the board shall be effective retroactively as of the first day immediately following the end of the aforementioned "six-month-notice period", and shall continue in effect until such time as the consideration payable by Grantee to City is again changed pursuant to any of the provisions of this Section 4.

If said board should fail to arrive at a determination within the twelve (12) months immediately following the expiration of the abovementioned "six-month-notice period", said board, unless otherwise agreed to by both parties, shall be deemed discharged, and a second board, no



members of which shall have been a member of the previous board, shall be established as follows: City and Grantee shall each appoint two (2) new arbitrators; City and Grantee, or either of them, shall petition the Superior Court of the State of California in and for the County of Santa Clara to appoint three (3) neutral arbitrators and to order all seven of said arbitrators to consider the proposed change or changes, to give both parties a reasonable opportunity to be heard, and to arrive at a determination, within a reasonable time specified by the Court, as to what change or changes, if any, shall be made. The determination shall be fair and reasonable to both parties, and in arriving at it the second board shall consider all matters and factors which the former board was required to consider. The second board's determination shall be in writing, and must be by majority vote of all seven (7) members; and its determination shall be final and conclusive and binding upon both parties. Any change or changes made or ordered by the board shall be effective retroactively as of the first day immediately following the end of the aforementioned "six-month-notice period" and shall continue in effect until such time as the consideration payable by Grantee to City is again changed pursuant to any of the provisions of this Section 4.

All costs and expenses of the boards of arbitration, and court costs in the event recourse is had to the Superior Court as aforesaid, shall be paid equally by City and Grantee.

In the event any person appointed to serve as an arbitrator on either of the abovementioned boards should die or fail or be unable to perform the duties of an arbitrator, a substitute shall be appointed to serve in his place and stead by the party or body which appointed his predecessor.

In the event that the arbitrators fail to comply with the order of the Court and to reach a decision by the majority vote of its seven (7) members within the period specified by the Court, or within three (3) years from and after the date of expiration of the above-mentioned "six-month-notice period", whichever is the shorter period of time, the party who proposed the change or changes shall thereafter have the right to terminate the rights, privileges and franchise herein granted by City to Grantee, and upon such termination, the rights, privileges and franchises of Grantee granted by this ordinance shall be at an end; provided, however, that such right of termination shall be deemed waived if not exercised within one hundred eighty (180) days immediately following the expiration of the time, specified by the Court, within which the board was required to reach a decision.

SECTION 5. Reports, Dates of Payment. Within three (3) months from and after the expiration of each calendar year, or fractional calendar year, following the effective date of this ordinance, Grantee shall file with the City Clerk of City the original, and with the Director of Finance of City a copy, and with the City Auditor of City another copy, of a duly verified statement showing in detail the gross receipts of Grantee during the preceding calendar year or fractional calendar year, and such other data or information as City may need to calculate or determine the amounts which Grantee is obligated to pay City pursuant to the provisions of Section 4. Said statement shall be in such form and detail as from time to time may be reasonably prescribed by City.

Within fifteen (15) days from and after the time for filing of each such statement, Grantee shall pay to City, at the office of City's Director of Finance, in lawful money of the United States, the sum of money hereinabove required to be paid by Grantee to City for the calendar year, or fractional calendar year, covered by the statement.

Any neglect, omission or refusal by Grantee to file such verified statement, or to pay said percentage at the time and in the manner specified shall be grounds for the declaration of a forfeiture of this franchise and of all rights and privileges of Grantee hereunder.

In the event Grantee fails to make the payments for this franchise on or before the dates due as hereinabove provided, Grantee shall pay as additional consideration both of the following amounts:

(a) A sum of money equal to two percent (2%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by City by reason of the delinquent payment, including, but not limited to, the cost of administering, accounting and collecting said delinquent payment and the cost to City of postponing services and projects necessitated by the delay in receiving revenue.

(b) A sum of money equal to one percent (1%) of the amount due per month as interest and for loss of use of the money due.

SECTION 6. Examination of Books, Accounts and Records. The City Auditor of City, or any certified public accountant or qualified person designated by City, at any reasonable times during business hours, may make examination or audit at Grantee's office or offices, of its books, accounts and records germane to and for the purpose of verifying the data set forth in the statement required by Section 5 hereof.

All books, accounts, and other records relating to the statement required by Section 5 hereof shall be kept within the City of San Jose, or the City of San Francisco, California, or in such other place within the territory served by Grantee as the reasonable convenience of Grantee may require.

In the event that it becomes necessary for said City Auditor, or any representative designated by City, to make such examination at any place other than within the County of Santa Clara or the City and County of San Francisco, then, in that event, all increased costs and expenses to City necessary or incident to such examination and resulting from such books and records not being available within said counties shall be paid to City by Grantee on demand.

Grantee shall file with the City's City Clerk, Director of Finance and City Auditor a copy of its annual report to the California Public Utilities Commission, or its successor in authority, as soon as practicable after the original of said report has been filed with said Commission or its successor in authority.

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SECTION 7. Franchise Subordinate to Public Use of Streets. The

franchise herein granted to Grantee, and all rights and privileges granted thereunder, are and shall be subordinate to the right of City, and of the general public, to use and occupy, and to any occupancy by them, of any street or streets for any municipal or public uses or purposes; provided, however, that the words "municipal or public uses or purposes" do not include the construction and operation by City of facilities to provide and deliver electricity, gas or water to private customers.

SECTION 8. Compliance With Laws. All work undertaken or performed, and all pipes and appurtenances constructed, maintained and used, pursuant to the provisions of the franchise granted herein, including but not limited to the practices of Grantee in its installation and removal of Grantee's facilities in the streets of City, shall be done, undertaken, performed and accomplished, and Grantee by acceptance of this franchise agrees that it will do, undertake, perform and accomplish the same, in accordance and compliance with applicable ordinances, rules and regulations of City now or as hereafter adopted or prescribed, and with applicable laws, rules, regulations and orders of the State of California, the Public Utilities Commission of the State of California and of any other governmental authority having jurisdiction in the premises, and, also, so as to cause the least possible hindrance to the use of the streets for the purpose of travel or any other public purpose.

SECTION 9. City Reserved Powers.

(a) City reserves the right for itself to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, re-grade or maintain below surface or above surface improvements of any type or description in, upon, along, across, under or over the streets of the City. City further reserves the right to relocate, remove, vacate or replace the streets themselves. If the exercise of the aforementioned reserve rights conflicts with any pipes or appurtenances of Grantee constructed, maintained and used pursuant to the provisions of the franchise granted hereby, whether previously constructed, maintained and used or not, or if a street or any part thereof is vacated and no easement is reserved to permit Grantee to retain its facilities therein, Grantee shall, and by acceptance of this franchise agrees to, without cost or expense to City, within a reasonable time after written notice from the City, or its authorized representative, and request so to do, begin the work of physical field construction, of changing the location of all facilities or equipment so conflicting, and also, unless otherwise authorized by the City, the work of removing its facilities from any street or part thereof which has been vacated and in which no easement is reserved to permit Grantee to retain its facilities therein, and, after such beginning, prosecute the work with due diligence to completion. In the event Grantee shall fail to commence such work within such reasonable time after service of said notice upon Grantee, or shall fail after such beginning to prosecute the same with due diligence to completion, City may, if it should wish to so do, without limitation with respect to any other rights or remedies which it may have under the circumstances, cause the work required in said notice to be done and performed by City or its agents or contractors, and Grantee, in such event, shall pay, and by acceptance of this franchise, shall be liable to pay, City the

costs thereof within ten (10) days after delivery to Grantee of an itemized bill therefor. It is understood and agreed that the cost of doing said work shall be considered to be the actual costs plus ten (10) percent thereof for overhead.

(b) Irrespective of any other provision of this ordinance, Grantee's right to construct, maintain and use, or remove pipes and appurtenances thereto shall be subject at all times to such right as the City may have, in the exercise of its police power, to require the removal or relocation, to either overhead or underground locations, of said pipes and appurtenances thereto at the sole cost and expense of Grantee.

(c) Nothing contained in this Section 9 shall require Grantee to remove or relocate its facilities so as to eliminate conflicts with facilities constructed and operated by City to provide and deliver electricity, gas or water to private customers.



SECTION 10. Hold Harmless. Grantee shall indemnify, save and hold harmless, and by acceptance of this franchise Grantee agrees to indemnify, save and hold harmless, the City, and all officers and employees of City, for, against and from all damages, judgments, decrees, costs and expenditures or loss which City, or any such officers or employees, may suffer, or which may be recovered from or be obtainable against City, or such officers or employees, for, or by reason of, or growing out of, or resulting from the exercise by Grantee of any or all of the rights or privileges granted by this franchise, or by reason of, or growing out of or resulting from any act or acts of Grantee or its servants or agents in exercising the franchise herein granted, or by reason of, or growing out of or resulting from the failure of Grantee to comply with the provisions of said franchise or to do anything required of it by said franchise; and Grantee shall defend, and by acceptance of said franchise agrees to defend, any suit that may be instituted against City, or any officer or employee thereof, by reason of or growing out of or resulting from the exercise by Grantee of any or all of the rights or privileges granted by said franchise, or by reason of any act or acts of Grantee, or its servants or agents, in exercising the franchise herein granted, or by reason, or growing out of or resulting from the failure of Grantee to comply with the provisions of said franchise or to do anything required of it by said franchise.

In the event that any person, firm or private or public corporation makes claim against City for any damages for or against or from which Grantee hereinabove agrees to indemnify City or save and hold City harmless, City shall give Grantee written notice of such claim within thirty (30) days from and after the date City receives said claim.

In the event that any person, firm or private or public corporation makes claim against any officer or employee of the City for any damages for or against or from which Grantee hereinabove agrees to indemnify said officer or employee or save and hold said officer or employee harmless, City or said employee shall give Grantee written notice of said claim within thirty (30) days from and after the date



said officer or employee receives said claim.

In the event City suffers any damage or loss for or against or from which Grantee hereinabove agrees to indemnify City or save and hold City harmless, City shall give Grantee written notice of such damage or loss within thirty (30) days from and after the expiration of a reasonable time, after incurring such damage or loss, within which it could determine whether the damage or loss was covered by the above indemnification and save and hold harmless provisions.

In the event any officer or employee of City suffers any damage or loss for or against or from which Grantee hereinabove agrees to indemnify said officer or employee or save and hold said officer or employee harmless, City or said employee shall give Grantee written notice of such damage or loss within thirty (30) days from and after the expiration of a reasonable time, after incurring such damage or loss, within which it could determine whether the damage or loss was covered by the above indemnification and save and hold harmless provisions.

SECTION 11. Repair Costs. Grantee shall pay, and by acceptance of this franchise agrees to pay, to City on demand the cost of all repairs to City property made necessary by any of the operations of Grantee under the franchise granted by this ordinance; provided, however, that, if and to the extent that such is authorized by ordinances, rules and regulations of the City as the same may now or hereafter exist, Grantee may make repairs to streets, sidewalks, curbs and gutters itself at its own cost in accordance with City ordinances, rules, regulations and specifications if the same can be so done without undue inconvenience of the City.

SECTION 12. Work Done By Grantee In Streets. Reference is hereby made to Section 8 of this ordinance. Subject to all laws, ordinances, rules, regulations and orders mentioned in said Section 8 and Grantee's

compliance therewith, and unless and until otherwise provided by said laws, ordinances, rules, regulations and orders, or any amendments or additions thereto which may hereafter be adopted, the following conditions shall apply to all work done by Grantee in the streets of City pursuant to the franchise herein granted to it, and Grantee, by acceptance of this franchise, agrees to comply therewith, to wit:

(a) Excavation Permits. Grantee shall not make, and Grantee by acceptance of this franchise agrees that it shall not make, any opening or excavation in any street in the City, nor disturb the earth beneath the surface of any such street, regardless of whether the surface thereof is to be damaged or removed or not, unless (i) Grantee shall have first applied for and obtained from the Engineer of City, in accordance with such applicable ordinances, rules or regulations of the City as may be in force or effect at the time such application is made, a permit for the work proposed to be done by Grantee, each such permit to prescribe the location, place, time and manner at and in which such work is to be done and such other conditions as the Engineer may prescribe, (ii) Grantee deposits such sum of money, or provides City with such surety bond, as may be required by any ordinance, rule or regulation of the City at the time the above application is made, as a guarantee and security to City that Grantee will reimburse City for any and all costs or damages which City may incur or suffer by reason of, in connection with or as a result of the doing of such work, and (iii) Grantee does all said work in accordance with the conditions of the abovementioned permit and all applicable laws, ordinances, rules and regulations in effect at such time, and (iv) Grantee reimburses City for all of its abovementioned costs and damages; provided and excepting, however, that in cases of emergency where the abovementioned work is urgently and immediately necessary to protect the public, the above-mentioned permit may be dispensed with.

(b) Restoration of Streets by Grantee. When any opening or excavation is made, or work done in, upon, along, across, under or over any street for any purpose whatever by Grantee, in connection with the exercise of any right or privilege granted by this franchise, any portion of said street affected or damaged thereby shall be restored by Grantee, and Grantee hereby agrees to restore the same, as promptly as practicable, to as useful, safe, durable and good condition as existed prior to the making of such opening or such excavation or the doing of such work, and the same shall be in conformity with the provisions of applicable ordinances, laws, rules and regulations of City adopted in the exercise of its police power in force and effect at the time of the performance of such work, and in accordance with applicable State laws, and shall be to the reasonable satisfaction of the Engineer. After the work of restoring such portion of said street has been completed as provided in this Section, Grantee shall preserve, and Grantee hereby agrees to preserve, such portion of said street so restored from deterioration resulting from it having been opened or excavated, ordinary wear, tear and use excepted.

(c) Repair of Streets by Grantee. If any portion of any street or City property shall be damaged by reason of, growing out of, or resulting from the exercise by Grantee of any or all of the rights or privileges granted by this ordinance, or by reason of any act or acts of Grantee, or its servants or agents, in the exercise of such rights or privileges, Grantee, at its own cost and expense, shall immediately repair such damage and restore said street or property to as useful, safe, durable and good condition as existed before such damage. Such work shall be done under the direction of the Engineer and to his reasonable satisfaction.

(d) Special Provisions Re Manholes, etc. All manholes, vaults, traps, catch basins, or other structures shall be so capped and covered as to be flush with the surface of the street, and shall not interfere in any way with the use of such street for the purpose of travel.

Grantee shall not lay, construct, erect or install in the streets of City any vent pipe from any vault, manhole or other structure of Grantee except in the manner and at the location or locations prescribed or approved by the Engineer.

(e) Notification of Abandonment or Removal of Facilities of Grantee. Upon abandonment or removal of any of the facilities or equipment of Grantee located above or below the surface of a street, Grantee shall notify the Engineer in writing of such abandonment or removal within not less than twenty (20) days thereafter.

(f) Restoration or Repair of Streets by City. Anything hereinabove in this Section 12 to the contrary notwithstanding, in the event during the term of this franchise City shall provide, by ordinance adopted in the exercise of its police power, that all work of restoring or repairing the portion of any street affected or damaged by any opening or excavation made or work done by Grantee in, upon, along, across, under or over said street, shall be done and performed by City and City shall have done and performed said work pursuant to the provisions of said ordinance, Grantee shall pay, and by the acceptance of this franchise Grantee agrees to pay City, the cost of performing such work. Said charges shall be paid by Grantee to City at the time and in the manner provided in said ordinance.

SECTION 13. No Recourse Against City for Damages Resulting From Public Work. If Grantee shall sustain any loss, injury or damage by reason of the doing by City of any public work, and if said work shall be done without negligence on the part of any officer, board, commission or department thereof, then Grantee shall have no recourse

whatever against City and/or any officer, board, commission or department thereof on account of such loss, injury or damage.

SECTION 14. Enumeration of Specific Rights of City Not to Limit General Reservations. The enumeration herein of specific rights reserved to City shall not be taken as exclusive, or as limiting the general reservations herein made.

SECTION 15. No Transfer Without Consent. Grantee shall not sell, lease, transfer or assign the franchise or all or any of the rights or privileges granted thereby unless an ordinance of the City consenting to such sale, lease, transfer or assignment shall have been duly adopted and become effective. Any such sale, lease, transfer or assignment consented to by any such ordinance shall be subject to all terms, conditions and provisions of this ordinance and of such consenting ordinance. Any sale, lease, transfer or assignment made without said consent, or in violation or non-compliance with the terms, conditions or provisions of any ordinance granting consent, shall be null and void and of no force or effect. However, nothing contained in this Section 15 shall be construed to prevent Grantee from including said franchise in a mortgage or trust deed without such express consent.

SECTION 16. Franchise Granted Herein To Be In Lieu Of Other City Franchises. The grant of this franchise is made in lieu of all other City franchises owned or claimed by Grantee which may authorize it to use all or any of the streets of City for transmitting and distributing gas.

Grantee, by acceptance of this franchise, and as a condition precedent to the enjoyment of any rights and privileges hereunder, surrenders to City all City franchises in lieu of which this grant is made.

SECTION 17. Forfeiture of Franchise. This franchise is granted upon each and every condition herein contained, and shall at all times be strictly construed against Grantee. Nothing shall be done by the franchise granted hereby to Grantee unless it be granted in plain and unambiguous terms. The enumeration herein of specific rights reserved to

City shall not be taken as exclusive, or as limiting the general reservations herein made. Each of said conditions is a material and essential condition to the granting of the franchise. If Grantee shall fail, neglect or refuse to comply with any of the conditions of the franchise granted hereby, and shall not within ten (10) days after written demand for compliance begin the work of compliance, or after such beginning shall not prosecute the same with due diligence to completion, then City, by the City Council, in addition to all rights and remedies allowed by law, thereupon may terminate and declare forfeited the right, privilege and franchise granted in and by this ordinance, and all the rights, privileges and the franchise of Grantee granted hereby shall thereupon be at an end. Thereupon and immediately, Grantee shall be deemed to have surrendered the franchise and all rights and privileges connected therewith. No provision herein made for the purpose of securing the enforcement of the terms and conditions of the franchise granted herein shall be deemed an exclusive remedy or to afford the exclusive procedure for the enforcement of said terms and conditions, but the remedies and procedures outlined herein or provided, including forfeiture, shall be deemed to be cumulative.

SECTION 18. Acquisition and Evaluation. Nothing in this ordinance or in the franchise granted hereby shall be construed as in any way impairing or affecting City's right to acquire property of Grantee, either by purchase, or through the exercise of City's power of eminent domain or through voluntary agreement between City and Grantee; and nothing in this ordinance or in the franchise granted herein shall be construed to contract away or to modify or to abridge either for a term or in perpetuity the City's right of eminent domain in respect to any public utility.

Also, the franchise and all rights and privileges herein granted to Grantee shall never be given, and Grantee shall not be deemed to have received the franchise.



2/16/72

agrees that such franchise, rights and privileges shall never be given, any value before any court or other public authority in any proceeding of any character in excess of the cost to the Grantee of the necessary publication and any other sum paid by it to the municipality at the time of the acquisition.

SECTION 19. Franchise to be Non-Exclusive. This franchise shall be non-exclusive, and neither the granting of this franchise nor any of the provisions contained herein shall prevent the City from granting any identical, similar or different franchise to any person other than Grantee for all or any areas of the City, or preclude at any time, City from constructing, maintaining and using pipes and appurtenances necessary or proper for transmitting and distributing gas to the public for any and all purposes in, along, across, upon, under or over any public streets and places in the City.

SECTION 20. Succession to Rights, Powers and Duties. Whenever in this ordinance any right or power is conferred or duty imposed upon the legislative body of City or any officer thereof, such right and power shall inure to and be exercised by, and such duty shall be imposed upon such body, board or officer of City as may by law hereafter succeed to their respective rights, powers and duties. All of the rights and powers conferred or duties imposed upon City in its present incorporated form shall inure to and be exercised by and be imposed upon City in any future reorganized, consolidated, enlarged or reincorporated form.

SECTION 21. Publication Expenses. Grantee of said franchise shall pay to City a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting thereof; such payment to be made within thirty (30) days after City shall have furnished Grantee with a written statement of such expense.



SECTION 22. Giving of Notices. (a) Any written notice herein required to be given by City, or any of its officers or agents, to Grantee, shall be deemed to have been duly served if delivered in person to, or if sent by registered or certified mail to any of the following officers at the following addresses, or to such other officers and addresses as the Grantee may from time to time file with the City Clerk of City, to wit:

Division Manager  
San Jose Division  
Pacific Gas and Electric  
Company  
San Jose, California 95114

Vice President and General Counsel  
Pacific Gas and Electric Company  
77 Beale Street  
San Francisco, California 94106

(b) Any written notice herein required by Grantee to be given to City, or any of its officers or agents, shall be deemed to have been duly served if delivered in person to the City Clerk of City, or if sent by registered or certified mail to the City Clerk of City.

SECTION 23. Use of Singular and Plural. The use of the singular number herein shall include the plural, and the use of the plural number shall include the singular.

SECTION 24. Acceptance of Franchise. Within ten (10) days after the effective date of this ordinance, Grantee shall file with the City Clerk a written acceptance of the franchise hereby granted, which acceptance shall constitute a continuing agreement on the part of Grantee to comply with the terms and conditions hereof, and no rights are hereby conferred until the filing of such acceptance. If Grantee shall fail to file its said written acceptance with said City Clerk within said ten (10) day period, the offer of franchise contained in this ordinance shall be deemed revoked, and said franchise may not be thereafter accepted.

SECTION 25. This ordinance is adopted pursuant and subject to the provisions of the Charter of City, and in accordance with the provisions

1/15/71

of Article X, Chapter 1, of the San Jose Municipal Code. The provisions of said Chapter 1 of Article X are hereby incorporated in this ordinance to the same extent as though fully set forth herein.

PASSED FOR PUBLICATION this 20th day of September, 1971, by the following vote:

AYES: Councilmen - Colla, Garza, Goglio, Hayes, Hays, Naylor, Mineta.

NOES: Councilmen - None

ABSENT: Councilmen - None

NORMAN Y. MINETA

\_\_\_\_\_  
Mayor

ATTEST: FRANCIS L. GREINER

By: Roy H. Hubbard, Deputy  
\_\_\_\_\_  
City Clerk

Void if detached

The attached is a full, true and correct copy of

Ordinance No. 15879  
which ~~became~~ effective on  
will become  
November 4, 1971

ATTEST:

Francis L. Greiner, City Clerk  
of the City of San Jose, Calif.

By: Patricia Caldwell Deputy

Dated: October 5, 1971

Form No. 170-43

GA

ORDINANCE NO. 21676

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING SECTIONS ONE (1), FOUR (4), AND FIVE (5) OF ORDINANCE NO. 15879 WHICH GRANTED PACIFIC GAS AND ELECTRIC COMPANY AN INDETERMINATE FRANCHISE FOR THE SALE OF GAS WITHIN THE CITY OF SAN JOSE; TO PROVIDE FOR A PERIOD OF QUARTERLY PAYMENTS OF FRANCHISE FEES; TO PROVIDE FOR A WAIVER OF CERTAIN NEGOTIATION AND ARBITRATION OF FRANCHISE FEES WHICH, PURSUANT TO ORDINANCE NO. 15879, WOULD OCCUR IN 1991 UNLESS WAIVED HEREIN; AND REPEALING ORDINANCE NO. 21176.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. That Section One (1) of Ordinance No. 15879 is hereby amended by adding thereto subsections (j), (k), (l), (m), (n), (o), (p), (q), and (r), to be numbered and entitled and to read as follows:

SECTION 1. Definitions. Wherever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions (unless in a given instance the context wherein they are used shall clearly import a different meaning):

(a) The word "Grantee" shall mean Pacific Gas and Electric Company and its lawful successors or assigns.

(b) The word "City" shall mean the City of San Jose, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

(c) The word "Engineer" shall mean such officer as may from time to time be designated by the Council of the City of San Jose or its successor, as the Engineer referred to in this ordinance; provided, that until otherwise provided by said Council or its successor, the word "Engineer" shall mean the head of the Public Works Department of the City of San Jose.

(d) The word "streets" shall mean the public streets, ways, alleys and places now or hereafter established within the City, including State highways and freeways now or hereafter established

within the City; provided and excepting, however, that the word "streets" shall not be deemed to mean or include any parks, playgrounds, school property or other municipal or public property not constituting public thoroughfares.

(e) The word "gas" shall mean natural or artificial gas, or a mixture of both.

(f) The words "pipes and appurtenances" shall mean pipes, pipelines, mains, services, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, appliances, attachments, appurtenances, and, without limitation to the foregoing, any other property located in, upon, along, across, under or over the streets of City, used or useful in transmitting and/or distributing gas for the purpose for which this franchise is granted.

(g) The words "construct, maintain and use" shall mean to construct, erect, install, operate, maintain, use, repair or replace.

(h) The phrase "constitutional franchise" shall mean such franchise or right, if any, as Grantee may have because of the acceptance by Grantee or its predecessor in estate of the offer contained in the provisions of Section 19 of Article XI of the Constitution of the State of California, as said Section existed prior to its amendment on October 10, 1911.

(i) The phrase "gross receipts", as used in this Section and in other parts of this ordinance, shall mean all gross operating revenues received or receivable by Grantee from the sale of gas to Grantee's customers with points of service within the corporate limits of the City (including but not limited to, sales to military reservations with points of service within the City's corporate limits) which are credited to Account Nos. 480, 481 and 482 of the current Uniform System of Accounts of the Federal Power Commission, as adopted by the California Public Utilities Commission, or similar superseding accounts, or which would be credited to such accounts or similar superseding accounts if Grantee kept its books in acceptance with such accounts or similar superseding accounts.

(j) The phrase "Quarterly Payment Amount" shall mean a payment of one quarter of the previous calendar year's total franchise fee payments paid to City pursuant to the gas franchise granted to Grantee pursuant to Ordinance No. 15879, as amended. Grantee shall not be required to make a quarterly payment, or may pay a lesser Quarterly Payment Amount, if payment of the full Quarterly Payment Amount would result in a Cumulative Value equivalent (as defined herein) exceeding Three Million Four Hundred Thousand Dollars (\$3,400,000) for both the gas franchise granted to Grantee pursuant to Ordinance No. 15879, as amended, and the electric franchise granted to Grantee pursuant to Ordinance No. 15880, as amended.

(k) The phrase "Quarterly Payment Dates" shall mean June 1, September 1, and December 1 of each year.

(l) The phrase "Quarterly Bond Yield" shall mean the yield on Domestic Municipal Bonds derived from the Bond Buyer's Index for Eleven General Obligation Bonds as published by the Bond Buyer founded in 1891 of One State Street Plaza, New York, New York, and as reported on the date that said index is published during the week following each of the dates of March 1, June 1, September 1, and December 1.

(m) The phrase "Annual Interest Rate" for each year that quarterly payments of franchise fees are made shall mean the average of the Quarterly Bond Yields during that year expressed as a decimal.

(n) The phrase "Annual Discount Factor" for each year that quarterly payments of franchise fees are made shall mean the figure of one plus the Annual Interest Rate, except that the Annual Discount Factor for 1983 shall be an amount equal to one plus three-quarters of the 1983 Annual Interest Rate.

(o) The phrase "Cumulative Discount Factor" for each year that the cumulative quarterly payments of franchise fees are made shall mean the product of the Annual Discount Factors from 1983 to that year inclusively.

(p) The phrase "Quarterly Value Factor" shall mean, in any year for which quarterly payments are made on June 1, September 1, or December 1, the product of the Annual Interest Rate and an amount

equal to .875 (10.5/12), .625 (7.5/12) or .375 (4.5/12) for the quarterly payments made June 1, September 1 or December 1, respectively.

(q) The phrase "Quarterly Value" shall mean the value of any Quarterly Payment Amount made in any year as expressed by: the product of (1) the Quarterly Payment Amount, and (2) the Quarterly Value Factor; as divided by (3) the Cumulative Discount Factor.

(r) The phrase "Cumulative Value" shall mean the sum of the Quarterly Values accumulated under this gas franchise plus the Quarterly Values accumulated under the electric franchise granted pursuant to Ordinance No. 15880, as amended.

SECTION 2. That Section Four (4) of Ordinance No. 15879 is hereby amended, to be numbered and entitled and to read as follows:

SECTION 4. Consideration. The franchise, and all rights and privileges, granted by this ordinance to Grantee are granted upon the express condition that Grantee, in consideration thereof and as compensation for the use of the streets of the City as herein authorized and permitted, shall pay to the City, in lawful money of the United States, in the manner and on the conditions hereinafter set forth in Section 5, for each of the calendar years (or fractional calendar years) following the effective date of this ordinance, a sum of money equal to two percent (2%) of Grantee's gross receipts during each such calendar year (or fractional calendar year); provided and excepting, however, that the amount of said annual compensation, and/or the formula or measure or manner in which the amount shall be determined, may be changed or amended as hereinafter provided in this Section, to wit:

(a) If, as a result of negotiation or litigation, or both, between Grantee and any other city or cities of the State of California, regardless of whether such other city or cities is or are a general law or charter city or cities, including but not limited to negotiation or litigation, or both, under any hereafter adopted statute or constitutional amendment, or if by litigation, whether the City participates therein or not, which right of participation is



hereby expressly reserved to the City, or if for any reason, the Grantee shall make payment or payments to any other city for any of said calendar years (or fractional calendar years) in accordance with a formula (hereinafter referred to as a "second formula") which if applied to the City would provide payments to the City greater than provided for by the use of the formula hereinabove specified in the first paragraph of this Section 4, such "second formula" shall prevail over the formula hereinabove specified in the first paragraph of this Section 4 for each of said years of the term of said franchise for or during which Grantee makes payments to any other city in accordance with said "second formula".

(b) In the event that the laws of the State of California, as they existed as of September 20, 1971, should at any time ever be amended or changed to permit general law cities, in granting franchise of the kind herein being granted to Grantee, to require the Grantee of any such franchise to pay or give any consideration or compensation in accordance with a formula (hereinafter referred to as "third formula") which, if applied to the City of San Jose and the Grantee herein, would provide payments to the City greater than provided for by the use of the formula hereinabove specified in the first paragraph of this section 4 or by the use of the above-mentioned "second formula" if such "second formula" is the higher, then in such event City shall have the right, at any time thereafter, to require Grantee to thereafter make payments in accordance with such "third formula"; provided, however that City shall not require Grantee to make any payments pursuant to the provision of this subparagraph B during the first thirty (30) years from September 20, 1971.

(c) Within the last six (6) calendar months of the calendar year 2001, and thereafter within the last six (6) calendar months of each ten (10) calendar year period following the calendar year 2001, each of such six (6) month periods being hereinafter referred to as "six-month-notice period," either City or Grantee, or each of them,

may serve written notice upon the other of its desire to change the amount or kind of consideration or compensation to be annually paid or given, after the expiration of such "six-month-notice period," by Grantee to City as consideration for said franchise and as compensation for the use by Grantee of the streets of the City as herein authorized and permitted, or of its desire to change the manner, measure or formula pursuant to which such annual consideration and compensation shall thereafter be determined. Said notice shall specify the change or changes desired. Within ninety (90) days from and after the date of service of such notice, or at such other time or times as the parties may mutually agree upon, City and Grantee shall meet and confer and attempt in good faith to resolve the matters at issue by mutual agreement. No such agreement shall be effective unless it is in writing, and unless it is approved and signed by both City and Grantee. No such agreement shall be deemed approved by City unless it shall have been approved and authorized by written ordinance adopted by the governing body of the City. Unless otherwise provided in the agreement, any change or changes agreed upon in any such agreement shall be effective from and after the commencement of the calendar year immediately following the expiration of the "six-month-notice period."

In the event that City and Grantee should fail to arrive at any agreement with respect to the proposed change or changes within ninety (90) days from and after the service of the above-mentioned notice, either party may thereafter serve upon the other a written notice of its intent to present the proposed change or changes to a Board of Arbitration for its consideration and decision. Unless otherwise agreed to by both parties, said notice must be served no later than the 30th day of June next following the expiration of the above-mentioned "six-month-notice period."

Unless otherwise agreed to by both parties in writing, the Board of Arbitration shall consist of seven (7) members, two (2) to be selected by the City, and two (2) to be selected by the Grantee.

The four (4) arbitrators selected by the parties shall select three (3) neutral arbitrators. Within thirty (30) days after service of said notice of intent to submit said matter to arbitration, or within such time as the parties may mutually agree upon in writing, each of the parties, respectively, shall select its two (2) members of the Board, and within thirty (30) days after the four (4) are selected, they shall select the three (3) neutral arbitrators. The Board of Arbitration shall then consider the proposed change or changes, and, after giving both parties a reasonable opportunity to be heard, shall determine what change or changes, if any, are to be made. The change or changes, if any, ordered by the Board, may differ from those requested or desired by either of the parties. The determination shall be fair and reasonable to both parties, and in arriving at it, the Board shall consider the nature and value of the rights and privileges granted by this ordinance to the Grantee, the costs, expenses and damages, if any, which City has, or will incur or suffer because of the grant of said rights and privileges to Grantee or because of Grantee's exercise of such rights and privileges, the amount to be paid to comparable cities for similar franchise rights and any and all other relevant factors. The Board's determination shall be in writing, shall be by the majority vote of its seven (7) members, and shall be final and conclusive and binding upon both parties. Unless otherwise agreed to by both parties in writing, the Board shall render its written decision on or before, and no later than, the last day of the first twelve (12) calendar months immediately following the expiration of the above-mentioned "six-month-notice period." Any change or changes made by the Board shall be effective retroactively as of the first day immediately following the end of the aforementioned "six-month-notice period," and shall continue in effect until such time as the consideration payable by Grantee to City is again changed pursuant to any of the provisions of this Section 4.

If said Board shall fail to arrive at a determination within the twelve (12) months immediately following the expiration of the above-mentioned "six-month-notice period," said Board, unless otherwise agreed to by both parties in writing, shall be deemed discharged, and, unless otherwise agreed to by both parties in writing, a second Board, no members of which shall have been a member of the previous Board, shall be established as follows: City and Grantee shall each appoint two (2) new arbitrators; City and Grantee, or either of them, shall petition the Superior Court of the State of California in and for the County of Santa Clara to appoint three (3) neutral arbitrators and to order all seven (7) of said arbitrators to consider the proposed change or changes, to give both parties a reasonable opportunity to be heard, and to arrive at a determination within a reasonable time specified by the Court, as to what change or changes, if any, shall be made. The determination shall be fair and reasonable to both parties, and in arriving at it, the second Board shall consider all matters and factors which the former Board was required to consider. The second Board's determination shall be in writing, and must be by majority vote of all seven (7) members; and its determination shall be final and conclusive and binding upon both parties. Any change or changes made or ordered by the Board shall be effective retroactively as of the first day immediately following the end of the aforementioned "six-month-notice period" and shall continue in effect until such time as the consideration payable by Grantee to City is again changed pursuant to any of the provisions of this Section 4.

Unless otherwise agreed to by both parties in writing, all costs and expenses of the Boards of Arbitration, and court costs in the event recourse is had to the Superior Court as aforesaid, shall be paid equally by City and Grantee.

In the event any person appointed to serve as an arbitrator on either of the above-mentioned Boards should die or fail or be unable to perform the duties of an arbitrator, a substitute shall be appointed to serve in his place and stead by the party or body which appointed his predecessor.

In the event that the arbitrators fail to comply with the order of the court and to reach a decision by the majority vote of its seven (7) members within the period specified by the court, or within three (3) years from and after the date of expiration of the above-mentioned "six-month-notice period," whichever is the shorter period of time, the party who proposed the change or changes shall thereafter have the right to terminate the rights, privileges and franchise granted by City to Grantee, and upon such termination, the rights, privileges and franchise of Grantee granted by this ordinance shall be at an end; provided, however, that such right of termination shall be deemed waived if not exercised within one hundred eighty (180) days immediately following the expiration of the time, specified by the court, within which the Board was required to reach a decision.

SECTION 3. That Section Five (5) of Ordinance No. 15879 is hereby amended, to be numbered and entitled and to read as follows:

SECTION 5. Reports, Dates of Payment. (a) On each Quarterly Payment Date Grantee shall pay to the City an amount equal to the Quarterly Payment Amount. Grantee shall make Quarterly Payments on each Quarterly Payment Date until such time as the Cumulative Value equals Three Million Four Hundred Thousand Dollars (\$3,400,000).

(b) Within three (3) months from and after the expiration of each calendar year, or fractional calendar year, following the effective date of this ordinance, Grantee shall file with the City Clerk of City the original, and with the Director of Finance of City a copy, and with the City Auditor of City another copy, of a duly verified statement showing in detail the gross receipts of Grantee and, if Quarterly Payments are required to be made pursuant to the provisions herein contained, the Cumulative Value of said Quarterly Payments, during the preceding calendar year or fractional calendar year, and such other data or information as City may need to calculate or determine the amounts which Grantee is obligated to pay City pursuant to the provisions of Section 4. Said statement shall be in such form and details as from time to time may be reasonably prescribed by City.

(c) Within fifteen (15) days from and after the time for filing such statement, Grantee shall pay to City, at the office of City's Director of Finance, in lawful money of the United States, the sum of money hereinabove required to be paid by Grantee to City for the calendar year, or fractional calendar year, covered by the statement, minus the sum of the Quarterly Payment amounts if any are required to be made pursuant to the provisions herein contained, paid during the year.

(d) Any neglect, omission or refusal by Grantee to file such verified statement, or to pay said percentage at the time and in the manner specified shall be grounds for the declaration of a forfeiture of this franchise and of all rights and privileges of Grantee hereunder.

(e) In the event Grantee fails to make the payments for this franchise on or before the dates due as hereinabove provided, Grantee shall pay as additional consideration both of the following amounts:

(i) A sum of money equal to two percent (2%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by City by reason of the delinquent payment, including, but not limited to, the cost of administering, accounting and collecting said delinquent payment and the cost to City of postponing services and projects necessitated by the delay in receiving revenue.

(ii) A sum of money equal to one percent (1%) of the amount due per month as interest and for loss of use of the money due.

(f) At such time as the Cumulative Value of said Quarterly Payment equals the sum of Three Million Four Hundred Thousand Dollars (\$3,400,000) as specified in subsection (a) hereinabove, Grantee shall no longer be required to make Quarterly Payments. At said time, Grantee shall be required to pay City the sum of money required to be paid as consideration for the rights, privileges, and franchise granted herein on or before the fifteenth (15th) day from and after the time for filing of the duly verified statement showing in detail the gross receipts of Grantee during the prior calendar year or fractional calendar year in accordance with the procedures of this Section 5(b-e).



SECTION 4. That Ordinance No. 21176, passed for publication of title on November 23, 1982, is hereby repealed.

SECTION 5. That this ordinance amending Ordinance No. 15879, is conditioned upon the filing by Grantee with the City Clerk of a written acceptance of this amendment to the franchise granted by Ordinance No. 15879, which said written acceptance shall be so filed within ten (10) days of the adoption date of this amending ordinance. If Grantee shall fail to so file its written acceptance with said City Clerk within said ten (10) day period, this amendment shall be deemed revoked and of no force and effect.

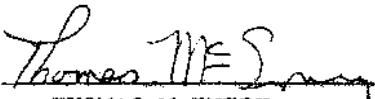
SECTION 6. That all other terms, conditions, and provisions of Ordinance No. 15879 not amended herein shall remain in full force and effect.

PASSED FOR PUBLICATION OF TITLE this 5th day of June, 1984, by the following vote:

AYES: ALVARADO, BEALL, ESTRUTH, FLETCHER, HAMMER, LANNI, LEWIS, RYDEN, SAUSED0, WILLIAMS AND McENERY

NOES: NONE

ABSENT: NONE

  
THOMAS McENERY, Mayor

ATTEST:

  
HELEN E. JACKSON, City Clerk

ORDINANCE NO. 26913

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING  
ORDINANCE NO. 15879 AS AMENDED BY ORDINANCE  
NO. 21676, WHICH GRANTED A FRANCHISE FOR THE  
SALE OF GAS WITHIN THE CITY OF SAN JOSE TO  
PACIFIC GAS & ELECTRIC COMPANY, TO ALLOW A  
CREDIT IN THE EVENT OF OVERPAYMENTS**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 5 of Ordinance No. 15879, as amended by Ordinance No. 21676,  
is amended to read as follows:

SECTION 5. Reports, Dates of Payment.

(a) On each Quarterly Payment Date Grantee shall pay to the City an amount equal to the Quarterly Payment Amount. Grantee shall make Quarterly Payments on each Quarterly Payment Date until such time as the Cumulative Value equals Three Million Four Hundred Thousand Dollars (\$3,400,000).

(b) Within three (3) months from and after the expiration of each calendar year, or fractional calendar year, following the effective date of this Ordinance, Grantee shall file with the City Clerk of the City the original, and with the Director of Finance of City a copy, and with the City Auditor of City another copy, of a duly verified statement showing in detail the gross receipts of Grantee and, if Quarterly Payments are required to be made pursuant to the provisions herein contained, the Cumulative Value of said Quarterly Payments, during the preceding calendar year or fractional calendar year, and such other data or information as City may need to calculate or determine the amounts which Grantee is obligated to pay City pursuant to the provisions of Section 4. Said

statement shall be in such form and details as from time to time may be reasonably prescribed by City.

(c) Within fifteen (15) days from and after the time for filing such statement, Grantee shall pay to City, at the office of City's Director of Finance, in lawful money of the United States, the sum of money hereinabove required to be paid by Grantee to City for the calendar year, or fractional calendar year, covered by the statement, minus the sum of the Quarterly Payment Amounts if any are required to be made pursuant to the provisions herein contained, paid during the year. In the event the total Quarterly Payment Amounts exceed the total annual payment due to City, upon the prior written acknowledgement by the Director of Finance that an overpayment appears to have occurred, Grantee shall deduct from each of the next year's Quarterly Payment Amounts the overpayment in equal amounts, without interest. The acknowledgement by the Director of Finance of an overpayment does not in anyway limit City's rights to seek payment in full from Grantee in the event City determines there was an underpayment of the annual payment due to City.

(d) Any neglect, omission or refusal by Grantee to file such verified statement, or to pay said percentage at the time and in the manner specified shall be grounds for the declaration of a forfeiture of this franchise and of all rights and privileges of Grantee hereunder.

(e) In the event Grantee fails to make the payments for this franchise on or before the dates due as hereinabove provided, Grantee shall pay as additional consideration both of the following amounts:

(i) A sum of money equal to two percent (2%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by City by reason of the delinquent payment, including, but not limited to, the cost of administering, accounting and collecting said

delinquent payment and the cost to City of postponing services and projects necessitated by the delay in receiving revenue.

(ii) A sum of money equal to one percent (1%) of the amount due per month as interest and for loss of use of the money due.

(f) At such time as the Cumulative Value of said Quarterly Payment equals the sum of Three Million Four Hundred Thousand Dollars (\$3,400,000) as specified in subsection (a) hereinabove, Grantee shall no longer be required to make Quarterly Payments. At said time, Grantee shall be required to pay City the sum of money required to be paid as consideration for the rights, privileges, and franchise granted herein on or before the fifteenth (15<sup>th</sup>) day from and after the time for filing of the duly verified statement showing in detail the gross receipts of Grantee during the prior calendar year or fractional calendar year in accordance with the procedures of this Section 5(b-e).

SECTION 2. This Ordinance amending Ordinance No. 15879, as amended by Ordinance No. 21676, is conditioned upon the filing by Grantee with the City Clerk of a written acceptance of this amendment to the franchise granted by Ordinance No. 15879, as amended by Ordinance No. 21676, which said written acceptance shall be so filed within ten (10) days of the adoption date of this amending Ordinance. If Grantee shall fail to so file its written acceptance with the City Clerk within said ten (10) day period, this amendment shall be deemed revoked and of no force and effect.

SECTION 3. All other terms, conditions, and provisions of Ordinance No. 15879, as amended by Ordinance No. 21676, not amended herein shall remain in full force and effect.

SECTION 4. This Ordinance shall be effective as of June 1, 2003, *nunc pro tunc*.

PASSED FOR PUBLICATION of title this 10<sup>th</sup> day of June, 2003, by the following vote:

AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, DANDO,  
GREGORY, LeZOTTE, REED, WILLIAMS, YEAGER;  
GONZALES

NOES: NONE

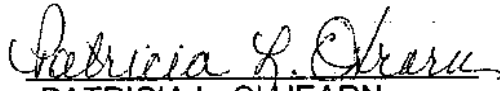
ABSENT: NONE

DISQUALIFIED: NONE



RON GONZALES  
Mayor

ATTEST:

  
PATRICIA L. O'HEARN  
City Clerk

The foregoing instrument is  
a correct copy of the original  
on file in this office.


Attest:

PATRICIA L. O'HEARN

City Clerk

City Clerk of the city of San Jose.

County of Santa Clara, State of California.

By  Deputy

**ORDINANCE NO. 28719**

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING ORDINANCE NO. 15879 AS AMENDED BY ORDINANCE NO. 21676 AND ORDINANCE NO. 26913 WHICH GRANTED A FRANCHISE FOR THE TRANSMISSION AND DISTRIBUTION OF GAS WITHIN THE CITY OF SAN JOSE TO PACIFIC GAS AND ELECTRIC COMPANY TO ADD A FRANCHISE FEE SURCHARGE OF 0.3% RESULTING IN A TOTAL FRANCHISE FEE REMITTED TO THE CITY OF 2.3% OF GROSS RECEIPTS AND TO PROVIDE FOR THE WAIVER OF CERTAIN NEGOTIATION AND ARBITRATION RIGHTS UNDER THE FRANCHISE**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Ordinance No. 15879, as amended by Ordinance No. 21676 and Ordinance No. 26913, is amended to add a new Section 4.1, to be numbered and entitled and to read as follows:

SECTION 4.1 Franchise Fee Surcharge.

(a) In addition to the annual compensation specified above in Section 4, and subject to the provisions set forth in Section 4(a)-(c), Grantee shall remit to the City during the term an additional sum of money equal to three tenths of one percent (0.3%) of the annual gross receipts of Grantee (the "Franchise Fee Surcharge") in consideration thereof and as compensation for the use of the streets of the City as herein authorized and permitted. Grantee shall remit to the City the Franchise Fee Surcharge, in lawful money of the United States, in the manner and on the conditions hereinafter set forth in Section 5, for each of the calendar years (or fractional calendar years) following the effective date of this Ordinance.

(b) Prior to Grantee's remittance to City of the Franchise Fee Surcharge, Grantee shall receive approval from the California Public Utilities Commission



("Commission") to collect the Franchise Fee Surcharge in accordance with Commission Decision 89-05-063, *Guidelines for the Equitable Treatment of Revenue Producing Mechanisms Imposed by Local Government Entities on Public Utilities*, 32 CPUC 2d 60, May 26, 1989.

SECTION 2. Section 5 of Ordinance No. 15879, as amended by Ordinance No. 21676 and Ordinance No. 26913, is amended to read as follows:

SECTION 5. Reports, Dates of Payment.

(a) On each Quarterly Payment Date, Grantee shall pay to the City an amount equal to the Quarterly Payment Amount. Grantee shall make Quarterly Payments on each Quarterly Payment Date until such time as specified in Section 5(f), notwithstanding anything to the contrary specified above in Section 1(j) that Grantee shall not be required to make a quarterly payment, or may pay a lesser Quarterly Payment Amount, if payment of the full Quarterly Payment Amount would result in a Cumulative Value equivalent exceeding Three Million Four Hundred Thousand Dollars (\$3,400,000).

(b) Within three (3) months from and after the expiration of each calendar year, or fractional calendar year, following the effective date of this Ordinance, Grantee shall file with the City Clerk of the City the original, and with the Director of Finance of City a copy, and with the City Auditor of City another copy, of a duly verified statement showing in detail the gross receipts of Grantee, and such other data or information as City may need to calculate or determine the amounts which Grantee is obligated to pay City pursuant to the provisions of Section 4. Said statement shall be in such form and details as from time to time may be reasonably prescribed by City.

(c) Within fifteen (15) days from and after the time for filing such statement, Grantee shall pay to City, at the office of City's Director of Finance, in lawful money of the United States, the sum of money hereinabove required to be paid by Grantee to City for the calendar year, or fractional calendar year, covered by the statement, minus the sum of the Quarterly Payment Amounts paid during the year. In the event the total Quarterly Payment Amounts exceed the total annual payment due to City, upon the prior written acknowledgement by the Director of Finance that an overpayment appears to have occurred, Grantee shall deduct from each of the next year's Quarterly Payment Amounts the overpayment in equal amounts, without interest. The acknowledgement by the Director of Finance of an overpayment does not in any way limit City's rights to seek payment in full from Grantee in the event City determines there was an underpayment of the annual payment due to City.

(d) Any neglect, omission or refusal by Grantee to file such verified statement, or to pay said percentage at the time and in the manner specified shall be grounds for the declaration of a forfeiture of this franchise and of all rights and privileges of Grantee hereunder.

(e) In the event Grantee fails to make the payments for this franchise on or before the dates due as hereinabove provided, Grantee shall pay as additional consideration both of the following amounts:

(i) A sum of money equal to two percent (2%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by City by reason of the delinquent payment, including, but not limited to, the cost of administering, accounting and collecting said delinquent payment and the cost to City of postponing services and projects necessitated by the delay in receiving revenue.

(ii) A sum of money equal to one percent (1%) of the amount due per month as interest and for loss of use of the money due.

(f) Grantee shall no longer be required to make Quarterly Payments if Grantee provides City with at least six (6) months' advance written notice of its intent to make annual payments instead as set forth below. The parties agree that such notice shall not be provided earlier than June 30, 2021. At said time, Grantee shall be required to pay City the sum of money required to be paid as consideration for the rights, privileges, and franchise granted herein on or before the fifteenth (15<sup>th</sup>) day from and after the time for filing of the duly verified statement showing in detail the gross receipts of Grantee during the prior calendar year or fractional calendar year in accordance with the procedures of this Section 5(b-e).

SECTION 3. If the Franchise Fee Surcharge is approved by the Commission, Grantee shall implement collection of the Franchise Fee Surcharge as soon as reasonably possible thereafter, but not later than 120 days following the Commission's approval. Grantee shall remit to the City the first Franchise Fee Surcharge payment on the first Quarterly Payment Date following the initial collection of the Franchise Fee Surcharge.

SECTION 4. The City and Grantee each expressly waives its rights under Section 4c of the franchise to provide the other with notice of its intent to change the amount or kind of consideration or compensation to be paid City or measure or formula to which the consideration and compensation is determined (for the franchise fee which is two percent (2%) of gross receipts and the Franchise Fee Surcharge which is three tenths of one percent (0.3%) of gross receipts) at any time before the last six (6) calendar months following calendar year 2021.

SECTION 5. This Ordinance amending Ordinance No. 15879, as amended by Ordinance No. 21676 and Ordinance No. 26913, is conditioned upon the filing by Grantee with the City Clerk of a written acceptance of this amendment to the franchise granted by Ordinance No. 15879, as amended by Ordinance No. 21676 and Ordinance No. 26913, which said written acceptance shall be so filed no later than ten (10) days of the adoption date of this amending Ordinance. If Grantee shall fail to so file its written acceptance with the City Clerk as specified in the preceding sentence, this amendment shall be deemed revoked and of no force and effect.

SECTION 6. All other terms, conditions, and provisions of Ordinance No. 15879, as amended by Ordinance No. 21676 and Ordinance No. 26913, not amended herein shall remain in full force and effect.

PASSED FOR PUBLICATION of title this 9th day of February, 2010, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,  
KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: NONE.

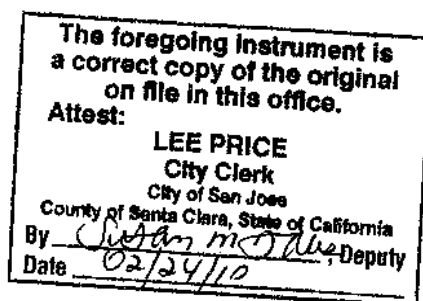
DISQUALIFIED: NONE.

ATTEST:

  
LEE PRICE, MMC  
City Clerk



CHUCK REED  
Mayor



## Electric Franchise

Ordinance 15880 (adopted September 20, 1971)

Ordinance 21677 (adopted June 5, 1984)

Ordinance 26914 (adopted June 10, 2003)

Ordinance 28720 (adopted February 9, 2010)

ORDINANCE NO. 19330

AN ORDINANCE OF THE CITY OF SAN JOSE GRANTING TO PACIFIC GAS AND ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE (1) TO USE, FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY SUITED FOR LIGHTING BUT FOR USE BY CONSUMERS FOR ANY AND ALL LAWFUL PURPOSES OTHER THAN LIGHTING, ALL POLES, WIRES, CONDUITS AND APPURTENANCES WHICH ARE NOW OR MAY HEREAFTER BE LAWFULLY PLACED AND MAINTAINED IN THE STREETS WITHIN THE CITY OF SAN JOSE UNDER SUCH FRANCHISE THAT GRANTEE MAY HAVE UNDER AND PURSUANT TO SECTION 19 OF ARTICLE XI OF THE CONSTITUTION OF THE STATE OF CALIFORNIA, AS SAID SECTION EXISTED PRIOR TO ITS AMENDMENT ON OCTOBER 10, 1911, (2) TO CONSTRUCT, MAINTAIN AND USE IN SAID STREETS ALL POLES, WIRES, CONDUITS AND APPURTENANCES WHENEVER AND WHEREVER SAID CONSTITUTIONAL FRANCHISE IS NOT NOW OR HEREAFTER AVAILABLE THEREFOR, NECESSARY TO TRANSMIT AND DISTRIBUTE ELECTRICITY SUITED FOR, AND FOR USE BY CONSUMERS FOR, ANY AND ALL LAWFUL PURPOSES, AND (3) TO UTILIZE SAID POLES, WIRES, CONDUITS AND APPURTENANCES IN SAID STREETS FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY FOR USE OUTSIDE THE BOUNDARIES OF THE CITY FOR ANY AND ALL LAWFUL PURPOSES, AND PROVIDING THE TERMS AND CONDITIONS OF THE FRANCHISE SO GRANTED.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Definitions. Wherever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions (unless in a given instance the context wherein they are used shall clearly import a different meaning):

(a) The word "Grantee" shall mean Pacific Gas and Electric Company, and its lawful successors or assigns.

(b) The word "City" shall mean the City of San Jose, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or re-incorporated form.

(c) The word "Engineer" shall mean such officer as may from time to time be designated by the Council of the City of San Jose or its successor, as the Engineer referred to in this ordinance; provided,



that until otherwise provided by said Council or its successor, the word "Engineer" shall mean the head of the Public Works Department of the City of San Jose.

(d) The word "streets" shall mean the public streets, ways, alleys and places now or hereafter established within the City, including State highways and freeways now or hereafter established within the City; providing and excepting, however, that the word "streets" shall not be deemed to mean or include any parks, playgrounds, school property or other municipal or public property not constituting public thoroughfares.

(e) The words "poles, wires, conduits and appurtenances" shall mean poles, towers, supports, wires, conductors, cables, guys, stubs, platforms, crossarms, braces, transformers, insulators, conduits, ducts, vaults, manholes, meters, cut-outs, switches, communication circuits, appliances, attachments, appurtenances and, without limitation to the foregoing, any other property located or to be located in, upon, along, across, under or over the streets of City, used or useful in transmitting and/or distributing electricity for the purposes for which this franchise is granted.

(f) The words "construct, maintain and use" shall mean to construct, erect, install, operate, maintain, use, repair or replace.

(g) The phrase "constitutional franchise" shall mean such franchise or right, if any, as Grantee may have because of the acceptance by Grantee or its predecessor in estate of the offer contained in the provisions of Section 19 of Article XI of the Constitution of the State of California, as said Section existed prior to its amendment on October 10, 1911.

(h) The phrase "gross receipts", as used in this Section and in other parts of this ordinance, shall mean all gross operating revenues received or receivable by Grantee from the sale of electricity to Grantee's customers with points of service within the corporate limits of the City (including, but not limited to, sales to military reservations with points of service within the City's corporate limits) which are credited to Account Nos. 440, 442, 444, 445 and 446 of the current Uniform System of Accounts of the Federal Power Commission, as adopted by

the California Public Utilities Commission, or similar superseding accounts, or which would be credited to such accounts or similar superseding accounts if Grantee kept its books in accordance with such accounts or similar superseding accounts.

SECTION 2. Purpose. Subject to each and all of the terms, conditions and limitations set forth in this ordinance, there is hereby granted to Grantee the franchise to do all of the following:

(a) To use, for transmitting and distributing electricity suited for lighting but for use by consumers for any and all lawful purposes other than lighting, all poles, wires, conduits and appurtenances which are now or may hereafter be lawfully placed and maintained in the streets within the City under the constitutional franchise of the Grantee;

(b) To construct, maintain and use in said streets within the City all poles, wires, conduits and appurtenances whenever and wherever the constitutional franchise of Grantee is not now or hereafter available therefor, necessary to transmit and distribute electricity suited for, and for use by consumers for, any and all lawful purposes; and

(c) To utilize said poles, wires, conduits and appurtenances in said streets for transmitting electricity for use outside the boundaries of City for any and all lawful purposes.

SECTION 3. Term. Subject to all terms, conditions and limitations contained in this ordinance, the franchise granted by this ordinance shall endure in full force and effect until the same shall, with the consent of the Public Utilities Commission of the State of California, be voluntarily surrendered or abandoned by Grantee, or until the State or any of its political subdivisions or agencies, or the City of San Jose or any municipal or public corporation, thereunto duly authorized by law shall purchase by voluntary agreement or shall condemn and take under the power of eminent domain, all property actually used and useful in the exercise of said franchise and situate in the territorial limits of the State, municipal or public corporation purchasing or condemning such property, or until said franchise shall be forfeited for noncompliance with its

terms or until said franchise is otherwise forfeited, terminated or abandoned pursuant to any of the provisions of this ordinance or pursuant to any applicable law.

SECTION 4. Consideration. The franchise, and all rights and privileges, granted by this ordinance to Grantee are granted upon the express condition that Grantee, in consideration thereof and as compensation for the use of the streets of the City as herein authorized and permitted, shall pay to the City, in lawful money of the United States, in the manner and on the conditions hereinafter set forth in Section 5, for each of the calendar years (or fractional calendar years) following the effective date of this ordinance, a sum of money equal to one percent (1%) of Grantee's gross receipts during each such calendar year (or fractional calendar year); provided and excepting, however, that the amount of said annual compensation, and/or the formula or measure or manner in which the amount shall be determined, may be changed or amended as hereinafter provided in this Section, to wit:

(a) If, as a result of negotiation or litigation, or both, between Grantee and any other city or cities of the State of California, regardless of whether such other city or cities is or are a general law or charter city or cities, including but not limited to negotiation or litigation, or both, under any hereafter adopted statute or constitutional amendment, or if by litigation, whether the City participates therein or not, which right of participation is hereby expressly reserved to the City, or if for any other reason, the Grantee shall make payment or payments to any other city for any of said calendar years (or fractional calendar years) in accordance with a formula (hereinafter referred to as a "second formula") which if applied to the City would provide payments to the City greater than provided for by the use of the formula hereinabove specified in the first paragraph of this Section 4, such "second formula" shall prevail over the formula hereinabove specified in the first paragraph of this Section 4 for each of said years of the term of said franchise for or during which Grantee makes payments to any other city in accordance with said "second formula".

(b) In the event that the laws of the State of California, as they exist as of the date of adoption of this ordinance, should at any time ever be amended or changed to permit general law cities, in granting franchises of the kind herein being granted to Grantee, to require the Grantee of any such franchise to pay or give any consideration or compensation in accordance with a formula (hereinafter referred to as "third formula") which, if applied to the City of San Jose and the Grantee herein, would provide payments to the City greater than provided for by the use of the formula hereinabove specified in the first paragraph of this Section 4 or by the use of the abovementioned "second formula" if such "second formula" is the higher, then in such event City shall have the right, at any time thereafter, to require Grantee to thereafter make payments in accordance with such "third formula"; provided, however, that City shall not require Grantee to make any payments pursuant to the provisions of this subparagraph (b) during the first thirty (30) years of the franchise herein granted by City to Grantee.

(c) Within the last six (6) calendar months of the calendar year 1981, and thereafter within the last six (6) calendar months of each ten (10) calendar year period following the calendar year 1981, each of such six (6) month periods being hereinafter referred to as "six-month-notice period", either City or Grantee, or each of them, may serve written notice upon the other of its desire to change the amount or kind of consideration or compensation to be annually paid or given, after the expiration of such "six-month-notice period", by Grantee to City as consideration for said franchise and as compensation for the use by Grantee of the streets of the City as herein authorized and permitted, or of its desire to change the manner, measure or formula pursuant to which such annual consideration and compensation shall thereafter be determined. Said notice shall specify the change or changes desired. Within ninety (90) days from and after the date of service of such notice, or at such other time or times as the parties may mutually agree upon, City and Grantee shall meet and confer and attempt in good faith to resolve the matters at issue by mutual agreement. No such agreement shall be

effective unless it is in writing, and unless it is approved and signed by both City and Grantee. No such agreement shall be deemed approved by City unless it shall have been approved and authorized by written ordinance adopted by the governing body of the City. Unless otherwise provided in the agreement, any change or changes agreed upon in any such agreement shall be effective from and after the commencement of the calendar year immediately following the expiration of the "six-month-notice period".

In the event that City and Grantee should fail to arrive at any agreement with respect to the proposed change or changes within ninety (90) days from and after the service of the abovementioned notice, either party may thereafter serve upon the other a written notice of its intent to present the proposed change or changes to a board of arbitration for its consideration and decision. Unless otherwise agreed to by both parties, said notice must be served no later than the 30th day of June next following the expiration of the above-mentioned "six-month-notice period".

The board of arbitration shall consist of seven (7) members, two (2) to be selected by the City, and two (2) to be selected by the Grantee. The four (4) arbitrators selected by the parties shall select three (3) neutral arbitrators. Within thirty (30) days after service of said notice of intent to submit said matter to arbitration, each of the parties, respectively, shall select its two (2) members of the board, and within thirty (30) days after the four (4) are selected, they shall select the three (3) neutral arbitrators. The board of arbitration shall then consider the proposed change or changes, and, after giving both parties a reasonable opportunity to be heard, shall determine what change or changes, if any, are to be made. The change or changes, if any, ordered by the board may differ from those requested or desired by either of the parties. The determination shall be fair and reasonable to both parties, and in arriving at it, the board shall consider the nature and value of the rights and privileges granted by this ordinance to the Grantee, the costs, expenses and damages, if any, which City has

or will incur or suffer because of the grant of said rights and privileges to Grantee or because of Grantee's exercise of such rights and privileges, the amount paid to comparable cities for similar franchise rights and any and all other relevant factors. The board's determination shall be in writing, shall be by the majority vote of its seven (7) members, and shall be final and conclusive and binding upon both parties. The board shall render its written decision on or before, and no later than, the last day of the first twelve (12) calendar months immediately following the expiration of the abovementioned "six-month-notice period". Any change or changes made by the board shall be effective retroactively as of the first day immediately following the end of the aforementioned "six-month-notice period", and shall continue in effect until such time as the consideration payable by Grantee to City is again changed pursuant to any of the provisions of this Section 4.

If said board shall fail to arrive at a determination within the twelve (12) months immediately following the expiration of the abovementioned "six-month-notice period", said board, unless otherwise agreed to by both parties, shall be deemed discharged, and a second board, no members of which shall have been a member of the previous board, shall be established as follows: City and Grantee shall each appoint two (2) new arbitrators; City and Grantee, or either of them, shall petition the Superior Court of the State of California in and for the County of Santa Clara to appoint three (3) neutral arbitrators and to order all seven (7) of said arbitrators to consider the proposed change or changes, to give both parties a reasonable opportunity to be heard, and to arrive at a determination, within a reasonable time specified by the Court, as to what change or changes, if any, shall be made. The determination shall be fair and reasonable to both parties, and in arriving at it the second board shall consider all matters and factors which the former board was required to consider. The second board's determination shall be in writing, and must be by majority vote of all seven (7) members; and its determination shall be final and conclusive and binding upon both parties. Any change or changes made or ordered by the board shall be effective retroactively



as of the first day immediately following the end of the aforementioned "six-month-notice period" and shall continue in effect until such time as the consideration payable by Grantee to City is again changed pursuant to any of the provisions of this Section 4.

All costs and expenses of the boards of arbitration, and court costs in the event recourse is had to the Superior Court as aforesaid, shall be paid equally by City and Grantee.

In the event any person appointed to serve as an arbitrator on either of the abovementioned boards should die or fail or be unable to perform the duties of an arbitrator, a substitute shall be appointed to serve in his place and stead by the party or body which appointed his predecessor.

In the event that the arbitrators fail to comply with the order of the court and to reach a decision by the majority vote of its seven (7) members within the period specified by the court, or within three (3) years from and after the date of expiration of the abovementioned "six-month-notice period", whichever is the shorter period of time, the party who proposed the change or changes shall thereafter have the right to terminate the rights, privileges and franchise herein granted by City to Grantee, and upon such termination, the rights, privileges and franchises of Grantee granted by this ordinance shall be at an end; provided, however, that such right of termination shall be deemed waived if not exercised within one hundred eighty (180) days immediately following the expiration of the time, specified by the court, within which the board was required to reach a decision.



SECTION 5. Reports, Dates of Payment. Within three (3) months from and after the expiration of each calendar year, or fractional calendar year, following the effective date of this ordinance, Grantee shall file with the City Clerk of City the original, and with the Director of Finance of City a copy, and with the City Auditor of City another copy, of a duly verified statement showing in detail the gross receipts of Grantee during the preceding calendar year or fractional calendar year, and such other data or information as City may need to calculate or determine the amounts which Grantee is obligated to pay City pursuant to the provisions of Section 4. Said statement shall be in such form and detail as from time to time may be reasonably prescribed by City.

Within fifteen (15) days from and after the time for filing of each such statement, Grantee shall pay to City, at the office of City's Director of Finance, in lawful money of the United States, the sum of money hereinabove required to be paid by Grantee to City for the calendar year, or fractional calendar year, covered by the statement.

Any neglect, omission or refusal by Grantee to file such verified statement, or to pay said percentage at the time and in the manner specified shall be grounds for the declaration of a forfeiture of this franchise and of all rights and privileges of Grantee hereunder.

In the event Grantee fails to make the payments for this franchise on or before the dates due as hereinabove provided, Grantee shall pay as additional consideration both of the following amounts:

(a) A sum of money equal to two percent (2%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by City by reason of the delinquent payment, including, but not limited to, the cost of administering, accounting and collecting said delinquent payment and the cost to City of postponing services and projects necessitated by the delay in receiving revenue.

(b) A sum of money equal to one percent (1%) of the amount due per month as interest and for loss of use of the money due.

SECTION 6. Examination of Books, Accounts and Records. The City Auditor of City, or any certified public accountant or qualified person designated by City, at any reasonable times during business hours, may make examination or audit at Grantee's office or offices, of its books, accounts and records germane to and for the purpose of verifying the data set forth in the statement required by Section 5 hereof.

All books, accounts, and other records relating to the statement required by Section 5 hereof shall be kept within the City of San Jose, or the City of San Francisco, California, or in such other place within the territory served by Grantee as the reasonable convenience of Grantee may require.

In the event that it becomes necessary for said City Auditor, or any representative designated by City, to make such examination at any place other than within the County of Santa Clara or the City and County of San Francisco, then, in that event, all increased costs and expenses to City necessary or incident to such examination and resulting from such books and records not being available within said counties shall be paid to City by Grantee on demand.

Grantee shall file with the City's City Clerk, Director of Finance and City Auditor a copy of its annual report to the California Public Utilities Commission, or its successor in authority, as soon as practicable after the original of said report has been filed with said Commission or its successor in authority.

SECTION 7. Franchise Subordinate to Public Use of Streets. The franchise herein granted to Grantee, and all rights and privileges granted thereunder, are and shall be subordinate to the right of City, and of the general public, to use and occupy, and to any occupancy by them, of any street or streets for any municipal or public uses or purposes; provided, however, that the words "municipal or public uses or purposes" do not include the construction and operation by City of facilities to provide and deliver electricity, gas or water to private customers.

SECTION 8. ~~Imposition With Power.~~ All work undertaken, or performed and all poles, wires, conduits and appurtenances constructed, maintained and used, pursuant to the provisions of the franchise granted herein, including but not limited to the practices of Grantee in its installation and removal of Grantee's facilities in the streets of City, shall be done, undertaken, performed and accomplished, and Grantee by acceptance of this franchise agrees that it will do, undertake, perform and accomplish the same, in accordance and compliance with applicable ordinances, rules and regulations of City now or as hereafter adopted or prescribed, and with applicable laws, rules, regulations and orders of the State of California, the Public Utilities Commission of the State of California and of any other governmental authority having jurisdiction in the premises, and, also, so as to cause the least possible hindrance to the use of the streets for the purpose of travel or any other public purpose.

SECTION 9. City Reserved Powers.

(a) City reserves the right for itself to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade or maintain below surface or above surface improvements of any type or description in, upon, along, across, under or over the streets of the City. City further reserves the right to relocate, remove, vacate or replace the streets themselves. If the exercise of the aforementioned reserve rights conflicts with any poles, wires, conduits and appurtenances of Grantee constructed, maintained and used pursuant to the provisions of the franchise granted hereby, whether previously constructed, maintained and used or not, or if a street or any part thereof is vacated and no easement is reserved to permit Grantee to retain its facilities therein, Grantee shall, and by acceptance of this franchise agrees to, without cost or expense to City, within a reasonable time after written notice from the City, or its authorized representative, and request so to do, begin the work of physical field construction, of changing the location of all facilities or equipment so conflicting. Unless otherwise authorized by the City, the work of removing its facilities from any street or part thereof which has been vacated and in which no easement is reserved to permit Grantee to retain its facilities therein, and, after such beginning, prosecute the work with due diligence to completion.

In the event Grantee shall fail to commence such work within such reasonable time after service of said notice upon Grantee, or shall fail after such beginning to prosecute the same with due diligence to completion, City may, if it should wish to so do, without limitation with respect to any other rights or remedies which it may have under the circumstances, cause the work required in said notice to be done and performed by City or its agents or contractors, and Grantee, in such event, shall pay, and by acceptance of this franchise agrees to pay, City the costs thereof, within ten (10) days after delivery to Grantee of an itemized bill therefor. It is understood and agreed that the cost of doing said work shall be considered to be the actual costs plus ten percent (10%) thereof for overhead.

(b) Irrespective of any other provision of this ordinance, Grantee's right to construct, maintain and use, or remove poles, wires, conduits and appurtenances thereto shall be subject at all times to such right as the City may have, in the exercise of its police power, to require the removal or relocation, to either overhead or underground locations, of said poles, wires, conduits and appurtenances thereto at the sole cost and expense of Grantee.

(c) Nothing contained in this Section 9 shall require Grantee to remove or relocate its facilities so as to eliminate conflicts with facilities constructed and operated by City to provide and deliver electricity, gas or water to private customers.

SECTION 10. Hold Harmless. Grantee shall indemnify, save and hold harmless, and by acceptance of this franchise Grantee agrees to indemnify, save and hold harmless, the City, and all officers and employees of City, for, against and from all damages, judgments, decrees, costs and expenditures or loss which City, or any such officers or employees, may suffer, or which may be recovered from or be obtainable against City, or such officers or employees, for, or by reason of, or growing out of, or resulting from the exercise by Grantee of any or all of the rights or privileges granted by this franchise, or by reason of, or growing out of or resulting from any act or acts of Grantee or its servants or agents in exercising the franchise herein granted, or by reason of, or growing out of or resulting from the failure of Grantee

to comply with the provisions of said franchise or to do anything required of it by said franchise; and Grantee shall defend, and by acceptance of said franchise agrees to defend, any suit that may be instituted against City, or any officer or employee thereof, by reason of or growing out of or resulting from the exercise by Grantee of any or all of the rights or privileges granted by said franchise, or by reason of any act or acts of Grantee, or its servants or agents, in exercising the franchise herein granted, or by reason, or growing out of or resulting from the failure of Grantee to comply with the provisions of said franchise or to do anything required of it by said franchise.

In the event that any person, firm or private or public corporation makes claim against City for any damages for or against or from which Grantee hereinabove agrees to indemnify City or save and hold City harmless, City shall give Grantee written notice of such claim within thirty (30) days from and after the date City receives said claim.

In the event that any person, firm or private or public corporation makes claim against any officer or employee of the City for any damages for or against or from which Grantee hereinabove agrees to indemnify said officer or employee or save and hold said officer or employee harmless, City or said employee shall give Grantee written notice of said claim within thirty (30) days from and after the date said officer or employee receives said claim.

In the event City suffers any damage or loss for or against or from which Grantee hereinabove agrees to indemnify City or save and hold City harmless, City shall give Grantee written notice of such damage or loss within thirty (30) days from and after the expiration of a reasonable time, after incurring such damage or loss, within which it could determine whether the damage or loss was covered by the above indemnification and save and hold harmless provisions.

In the event any officer or employee of City suffers any damage or loss for or against or from which Grantee hereinabove agrees to



indemnify said officer or employee or save and hold said officer or employee harmless; City or said employee shall give Grantee written notice of such damage or loss within thirty (30) days from and after the expiration of a reasonable time, after incurring such damage or loss, within which it could determine whether the damage or loss was covered by the above indemnification and save and hold harmless provisions.

SECTION 11. Repair Costs. Grantee shall pay, and by acceptance of this franchise agrees to pay, to City on demand the cost of all repairs to City property made necessary by any of the operations of Grantee under the franchise granted by this ordinance; provided, however, that, if and to the extent that such is authorized by ordinances, rules and regulations of the City as the same may now or hereafter exist, Grantee may make repairs to streets, sidewalks, curbs and gutters itself at its own cost in accordance with City ordinances, rules, regulations and specifications if the same can be so done without undue inconvenience of the City.

SECTION 12. Work Done By Grantee In Streets. Reference is hereby made to Section 8 of this ordinance. Subject to all laws, ordinances, rules, regulations and orders mentioned in said Section 8 and Grantee's compliance therewith, and unless and until otherwise provided by said laws, ordinances, rules, regulations and orders, or any amendments or additions thereto which may hereafter be adopted, the following conditions shall apply to all work done by Grantee in the streets of City pursuant to the franchise herein granted to it, and Grantee, by acceptance of this franchise, agrees to comply therewith, to wit:

(a) Excavation Permits. Grantee shall not make, and Grantee by acceptance of this franchise agrees that it shall not make, any opening or excavation in any street in the City, nor disturb the earth beneath the surface of any such street, regardless of whether the surface

thereof is to be damaged or removed or not, unless (i) Grantee shall have first applied for and obtained from the Engineer of City, in accordance with such applicable ordinances, rules or regulations of the City as may be in force or effect at the time such application is made, a permit for the work proposed to be done by Grantee, each such permit to prescribe the location, place, time and manner at and in which such work is to be done and such other conditions as the Engineer may prescribe, (ii) Grantee deposits such sum of money, or provides City with such surety bond, as may be required by any ordinance, rule or regulation of the City at the time the above application is made, as a guarantee and security to City that Grantee will reimburse City for any and all costs or damages which City may incur or suffer by reason of, in connection with or as a result of the doing of such work, and (iii) Grantee does all said work in accordance with the conditions of the abovementioned permit and all applicable laws, ordinances, rules and regulations in effect at such time, and (iv) Grantee reimburses City for all of its abovementioned costs and damages; provided and excepting, however, that in cases of emergency where the abovementioned work is urgently and immediately necessary to protect the public safety, the abovementioned permit may be dispensed with.

(b) Restoration of Streets by Grantee. When any opening or excavation is made, or work done in, upon, along, across, under or over any street for any purpose whatever by Grantee, in connection with the exercise of any right or privilege granted by this franchise, any portion of said street affected or damaged thereby shall be restored by Grantee, and Grantee hereby agrees to restore the same, as promptly as practicable, to as useful, safe, durable and good condition as existed prior to the making of such opening or such excavation or the doing of such work, and the same shall be in conformity with the provisions of applicable ordinances, laws, rules and regulations of City adopted in the exercise of its police power in force and effect at the time of the performance of such work, and in accordance with applicable State laws, and



shall be to the reasonable satisfaction of the Engineer. After the work of restoring such portion of said street has been completed as provided in this Section, Grantee shall preserve, and Grantee hereby agrees to preserve, such portion of said street so restored from deterioration resulting from it having been opened or excavated, ordinary wear, tear and use excepted.

(c) Repair of Streets by Grantee. If any portion of any street or City property shall be damaged by reason of, growing out of, or resulting from the exercise by Grantee of any or all of the rights or privileges granted by this ordinance, or by reason of any act or acts of Grantee, or its servants or agents, in the exercise of such rights or privileges, Grantee, at its own cost and expense, shall immediately repair such damage and restore said street or property to as useful, safe, durable and good condition as existed before such damage. Such work shall be done under the direction of the Engineer and to his reasonable satisfaction.

(d) Special Provisions Re Manholes, etc. All manholes, vaults, traps, catch basins, or other structures shall be so capped and covered as to be flush with the surface of the street, and shall not interfere in any way with the use of such street for the purpose of travel.

Grantee shall not lay, construct, erect or install in the streets of City any vent pipe from any vault, manhole or other structure of Grantee except in the manner and at the location or locations prescribed or approved by the Engineer.

(e) Notification of Abandonment or Removal of Facilities of Grantee. Upon abandonment or removal of any of the facilities or equipment of Grantee located above or below the surface of a street, Grantee shall notify the Engineer in writing of such abandonment or removal within not less than twenty (20) days thereafter.

(f) Restoration or Repair of Streets by City. Anything hereinabove in this Section 12 to the contrary notwithstanding, in the event during the term of this franchise City shall provide, by ordinance adopted in the exercise of its police power, that all work of restoring or repairing the portion of any street affected or damaged by any opening or excavation made or work done by Grantee in, upon, along, across, under or over said street, shall be done and performed by City and City shall have done and performed said work pursuant to the provisions of said ordinance, Grantee shall pay, and by the acceptance of this franchise Grantee agrees to pay City, the cost of performing such work. Said charges shall be paid by Grantee to City at the time and in the manner provided in said ordinance.

SECTION 13. No Recourse Against City for Damages Resulting From Public Work. If Grantee shall sustain any loss, injury or damage by reason of the doing by City of any public work, and if said work shall be done without negligence on the part of City and/or any officer, board, commission or department thereof, then Grantee shall have no recourse whatever against City and/or any officer, board, commission or department thereof on account of such loss, injury or damage.

SECTION 14. Enumeration of Specific Rights of City Not to Limit General Reservations. The enumeration herein of specific rights reserved to City shall not be taken as exclusive, or as limiting the general reservations herein made.

SECTION 15. No Transfer Without Consent. Grantee shall not sell, lease, transfer or assign the franchise or all or any of the rights or privileges granted thereby unless an ordinance of the City consenting to such sale, lease, transfer or assignment shall have been duly adopted and become effective. Any such sale, lease, transfer or assignment consented to by any such ordinance shall be subject to all terms, conditions and provisions of this ordinance and of such consenting ordinance. Any

sale, lease, transfer or assignment made without said consent, or in violation or non-compliance with the terms, conditions or provisions of any ordinance granting consent, shall be null and void and of no force or effect. However, nothing contained in this Section 15 shall be construed to prevent Grantee from including said franchise in a mortgage or trust deed without such express consent.

SECTION 16. Franchise Granted Herein To Be In Lieu Of Other City Franchises. The grant of this franchise is made in lieu of all other City franchises owned or claimed by Grantee which may authorize it to use all or any of the streets of City for transmitting and distributing electricity.

Grantee, by acceptance of this franchise, and as a condition precedent to the enjoyment of any rights and privileges hereunder, surrenders to City all City franchises in lieu of which this grant is made.

SECTION 17. Forfeiture of Franchise. This franchise is granted upon each and every condition herein contained, and shall at all times be strictly construed against Grantee. Nothing shall pass by the franchise granted hereby to Grantee unless it be granted in plain and unambiguous terms. The enumeration herein of specific rights reserved to City shall not be taken as exclusive, or as limiting the general reservations herein made. Each of said conditions is a material and essential condition to the granting of the franchise. If Grantee shall fail, neglect or refuse to comply with any of the conditions of the franchise granted hereby, and shall not within ten (10) days after written demand for compliance begin the work of compliance, or after such beginning shall not prosecute the same with due diligence to completion, then City, by the City Council, in addition to all rights and remedies allowed by law, thereupon may terminate and declare forfeited the right, privilege and franchise granted in and by this ordinance, and all the rights,

privileges and the franchise of Grantee granted hereby shall thereupon be at an end. Thereupon and immediately, Grantee shall be deemed to have surrendered the franchise and all rights and privileges connected therewith. No provision herein made for the purpose of securing the enforcement of the terms and conditions of the franchise granted herein shall be deemed an exclusive remedy or to afford the exclusive procedure for the enforcement of said terms and conditions, but the remedies and procedure outlined herein or provided, including forfeiture, shall be deemed to be cumulative.

SECTION 18. Acquisition and Evaluation. Nothing in this ordinance or in the franchise granted hereby shall be construed as in any way impairing or affecting City's right to acquire property of Grantee, either by purchase, or through the exercise of City's power of eminent domain or through voluntary agreement between City and Grantee; and nothing in this ordinance or in the franchise granted herein shall be construed to contract away or to modify or to abridge either for a term or in perpetuity the City's right of eminent domain in respect to any public utility.

Also, the franchise and all rights and privileges herein granted to Grantee shall never be given, and Grantee by acceptance of the franchise agrees that such franchise, rights and privileges shall never be given, any value before any court or other public authority in any proceeding of any character in excess of the cost to the Grantee of the necessary publication and any other sum paid by it to the municipality at the time of the acquisition.

SECTION 19. Franchise to be Non-Exclusive. This franchise shall be non-exclusive, and neither the granting of this franchise nor any of the provisions contained herein shall prevent the City from granting any ~~identical, similar or different franchise to any person other than~~ Grantee for all or any areas of the City, or ~~at any time~~ at any time, City from constructing, maintaining and using poles, wires, conduits and appurtenances necessary or proper for transmitting and distributing

electricity to the public for any and all purposes in, along, across, upon, under or over any public streets and places in the City.

SECTION 20. Succession to Rights, Powers and Duties. Whenever in this ordinance any right or power is conferred or duty imposed upon the legislative body of City or any officer thereof, such right and power shall inure to and be exercised by, and such duty shall be imposed upon such body, board or officer of City as may by law hereafter succeed to their respective rights, powers and duties. All of the rights and powers conferred or duties imposed upon City in its present incorporated form shall inure to and be exercised by and be imposed upon City in any future reorganized, consolidated, enlarged or reincorporated form.

SECTION 21. Publication Expenses. Grantee of said franchise shall pay to City a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting thereof; such payment to be made within thirty (30) days after City shall have furnished Grantee with a written statement of such expense.

SECTION 22. Giving of Notices. (a) Any written notice herein required to be given by City, or any of its officers or agents, to Grantee, shall be deemed to have been duly served if delivered in person to, or if sent by registered or certified mail to any of the following officers at the following addresses, or to such other officers and addresses as the Grantee may from time to time file with the City Clerk of City, to wit:

Division Manager  
San Jose Division  
Pacific Gas and Electric  
Company  
86 South Third Street  
San Jose, California 95114

Vice President and General  
Counsel  
Pacific Gas and Electric  
Company  
77 Beale Street  
San Francisco, California 94106

(b) Any written notice herein required by Grantee to be given to City, or any of its officers or agents, shall be deemed to have been duly served if delivered in person to the City Clerk of City, or if sent by registered or certified mail to the City Clerk of City.

15880  
SECTION 23. Use of Singular and Plural. The use of the singular number herein shall include the plural, and the use of the plural number shall include the singular.

SECTION 24. Acceptance of Franchise. Within ten (10) days after the effective date of this ordinance, Grantee shall file with the City Clerk a written acceptance of the franchise hereby granted, which acceptance shall constitute a continuing agreement on the part of Grantee to comply with the terms and conditions hereof, and no rights are hereby conferred until the filing of such acceptance. If Grantee shall fail to file its said written acceptance with said City Clerk within said ten (10) day period, the offer of franchise contained in this ordinance shall be deemed revoked, and said franchise may not be thereafter accepted.

SECTION 25. This ordinance is adopted pursuant and subject to the provisions of the Charter of City, and in accordance with the provisions of Article X, Chapter 1, of the San Jose Municipal Code. The provisions of said Chapter 1 of Article X are hereby incorporated in this ordinance to the same extent as though fully set forth herein.

PASSED FOR PUBLICATION this 20th day of September, 1971, by the following vote:

AYES: Councilmen - Colla, Garza, Goglio, Hayes, Hays, Naylor, Mineta.

NOES: Councilmen - None

ABSENT: Councilmen - None

NORMAN Y. MINETA

ATTEST: FRANCIS L. GREINER

By: Roy H. Hubbard, Deputy  
City Clerk

The attached is a full, true and correct copy of

Ordinance No. 15880  
which became effective on  
November 4, 1971

ATTEST:

Francis L. Greiner, City Clerk  
of the City of San Jose, Calif.

By: Patricia Caldwell Deputy

Dated: October 5, 1971

Void if detached



## ORDINANCE NO. 21677

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING SECTIONS ONE (1), FOUR (4), AND FIVE (5) OF ORDINANCE NO. 15880 WHICH GRANTED PACIFIC GAS AND ELECTRIC COMPANY AN INDETERMINATE FRANCHISE FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY WITHIN THE CITY OF SAN JOSE; TO PROVIDE FOR A PERIOD OF QUARTERLY PAYMENTS OF FRANCHISE FEES; TO PROVIDE FOR A WAIVER OF CERTAIN NEGOTIATION AND ARBITRATION OF FRANCHISE FEES WHICH, PURSUANT TO ORDINANCE NO. 15880, WOULD OCCUR IN 1991 UNLESS WAIVED HEREIN; AND REPEALING ORDINANCE NO. 21177.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. That Section One (1) of Ordinance No. 15880 is hereby amended by adding thereto subsections (i), (j), (k), (l), (m), (n), (o), (p), and (q), to be numbered and entitled and to read as follows:

SECTION 1. Definitions. Wherever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions (unless in a given instance the context wherein they are used shall clearly import a different meaning):

(a) The word "Grantee" shall mean Pacific Gas and Electric Company and its lawful successors or assigns.

(b) The word "City" shall mean the City of San Jose, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

(c) The word "Engineer" shall mean such officer as may from time to time be designated by the Council of the City of San Jose or its successor, as the Engineer referred to in this ordinance; provided, that until otherwise provided by said Council or its successor, the word "Engineer" shall mean the head of the Public Works Department of the City of San Jose.

(d) The word "streets" shall mean the public streets, ways, alleys and places now or hereafter established within the City,



ORDINANCE NO. 21677

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING SECTIONS ONE (1), FOUR (4), AND FIVE (5) OF ORDINANCE NO. 15880 WHICH GRANTED PACIFIC GAS AND ELECTRIC COMPANY AN INDETERMINATE FRANCHISE FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY WITHIN THE CITY OF SAN JOSE; TO PROVIDE FOR A PERIOD OF QUARTERLY PAYMENTS OF FRANCHISE FEES; TO PROVIDE FOR A WAIVER OF CERTAIN NEGOTIATION AND ARBITRATION OF FRANCHISE FEES WHICH, PURSUANT TO ORDINANCE NO. 15880, WOULD OCCUR IN 1991 UNLESS WAIVED HEREIN; AND REPEALING ORDINANCE NO. 21177.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. That Section One (1) of Ordinance No. 15880 is hereby amended by adding thereto subsections (i), (j), (k), (l), (m), (n), (o), (p), and (q), to be numbered and entitled and to read as follows:

SECTION 1. Definitions. Wherever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions (unless in a given instance the context wherein they are used shall clearly import a different meaning):

(a) The word "Grantee" shall mean Pacific Gas and Electric Company and its lawful successors or assigns.

(b) The word "City" shall mean the City of San Jose, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

The attached is a full, true and correct copy of the original now on file in my office.

ATTEST:

Helen E. Jackson, City Clerk  
of the City of San Jose, California

By: Sharon K. Padden Deputy

Dated: JUN 0 6 1994

Form No. 179-40

neer" shall mean such officer as may from  
ed by the Council of the City of San Jose or  
gineer referred to in this ordinance;  
erwise provided by said Council or its  
ineer" shall mean the head of the Public  
ity of San Jose.  
ets" shall mean the public streets, ways,  
hereafter established within the City,

VOID IF DETACHED

including State highways and freeways now or hereafter established within the City; provided and excepting, however, that the word "streets" shall not be deemed to mean or include any parks, playgrounds, school property or other municipal or public property not constituting public thoroughfares.

(e) The words "poles, wires, conduits and appurtenances" shall mean poles, towers, supports, wires, conductors, cables, guys, stubs, platforms, crossarms, braces, transformers, insulators, conduits, ducts, vaults, manholes, meters, cut-outs, switches, communication circuits, appliances, attachments, appurtenances and, without limitation to the foregoing, any other property located or to be located in, upon, along, across, under or over the streets of City, used or useful in transmitting and/or distributing electricity for the purposes for which this franchise is granted.

(f) The words "construct, maintain and use" shall mean to construct, erect, install, operate, maintain, use, repair or replace.

(g) The phrase "constitutional franchise" shall mean such franchise or right, if any, as Grantee may have because of the acceptance by Grantee or its predecessor in estate of the offer contained in the provisions of Section 19 of Article XI of the Constitution of the State of California, as said Section existed prior to its amendment on October 10, 1911.

(h) The phrase "gross receipts", as used in this Section and in other parts of this ordinance, shall mean all gross operating revenues received or receivable by Grantee from the sale of electricity to Grantee's customers with points of service within the corporate limits of the City (including but not limited to, sales to military reservations with points of service within the City's corporate limits) which are credited to Account Nos. 480, 481 and 482 of the current Uniform System of Accounts of the Federal Power Commission, as adopted by the California Public Utilities Commission, or similar superseding accounts, or which would be credited to such accounts or similar superseding accounts if Grantee kept its books in acceptance with such accounts or similar superseding accounts.

(i) The phrase "Quarterly Payment Amount" shall mean a payment of one quarter of the previous calendar year's total franchise fee payments paid to City pursuant to the electric franchise granted to Grantee pursuant to Ordinance No. 15880, as amended. Grantee shall not be required to make a quarterly payment, or may pay a lesser Quarterly Payment Amount, if payment of the full Quarterly Payment Amount would result in a Cumulative Value equivalent (as defined herein) exceeding Three Million Four Hundred Thousand Dollars (\$3,400,000) for both the electric franchise granted to Grantee pursuant to Ordinance No. 15880, as amended, and the gas franchise granted to Grantee pursuant to Ordinance No. 15879, as amended.

(j) The phrase "Quarterly Payment Dates" shall mean June 1, September 1, and December 1 of each year.

(k) The phrase "Quarterly Bond Yield" shall mean the yield on Domestic Municipal Bonds derived from the Bond Buyer's Index for Eleven General Obligation Bonds as published by the Bond Buyer founded in 1891 of One State Street Plaza, New York, New York, and as reported on the date that said index is published during the week following each of the dates of March 1, June 1, September 1, and December 1.

(l) The phrase "Annual Interest Rate" for each year that quarterly payments of franchise fees are made shall mean the average of the Quarterly Bond Yields during that year expressed as a decimal.

(m) The phrase "Annual Discount Factor" for each year that quarterly payments of franchise fees are made shall mean the figure of one plus the Annual Interest Rate, except that the Annual Discount Factor for 1983 shall be an amount equal to one plus three-quarters of the 1983 Annual Interest Rate.

(n) The phrase "Cumulative Discount Factor" for each year that the cumulative quarterly payments of franchise fees are made shall mean the product of the Annual Discount Factors from 1983 to that year inclusively.

(o) The phrase "Quarterly Value Factor" shall mean, in any year for which quarterly payments are made on June 1, September 1, or December 1, the product of the Annual Interest Rate and an amount

equal to .875 (10.5/12), .625 (7.5/12) or .375 (4.5/12) for the quarterly payments made June 1, September 1 or December 1, respectively.

(p) The phrase "Quarterly Value" shall mean the value of any Quarterly Payment Amount made in any year as expressed by: the product of (1) the Quarterly Payment Amount, and (2) the Quarterly Value Factor; as divided by (3) the Cumulative Discount Factor.

(q) The phrase "Cumulative Value" shall mean the sum of the Quarterly Values accumulated under this electric franchise plus the Quarterly Values accumulated under the gas franchise granted pursuant to Ordinance No. 15879, as amended.

SECTION 2. That Section Four (4) of Ordinance No. 15880 is hereby amended, to be numbered and entitled and to read as follows:

SECTION 4. Consideration. The franchise, and all rights and privileges, granted by this ordinance to Grantee are granted upon the express condition that Grantee, in consideration thereof and as compensation for the use of the streets of the City as herein authorized and permitted, shall pay to the City, in lawful money of the United States, in the manner and on the conditions hereinafter set forth in Section 5, for each of the calendar years (or fractional calendar years) following the effective date of this ordinance, a sum of money equal to two percent (2%) of Grantee's gross receipts during each such calendar year (or fractional calendar year); provided and excepting, however, that the amount of said annual compensation, and/or the formula or measure or manner in which the amount shall be determined, may be changed or amended as hereinafter provided in this Section, to wit:

(a) If, as a result of negotiation or litigation, or both, between Grantee and any other city or cities of the State of California, regardless of whether such other city or cities is or are a general law or charter city or cities, including but not limited to negotiation or litigation, or both, under any hereafter adopted statute or constitutional amendment, or if by litigation, whether the City participates therein or not, which right of participation is

hereby expressly reserved to the City, or if for any reason, the Grantee shall make payment or payments to any other city for any of said calendar years (or fractional calendar years) in accordance with a formula (hereinafter referred to as a "second formula") which if applied to the City would provide payments to the City greater than provided for by the use of the formula hereinabove specified in the first paragraph of this Section 4, such "second formula" shall prevail over the formula hereinabove specified in the first paragraph of this Section 4 for each of said years of the term of said franchise for or during which Grantee makes payments to any other city in accordance with said "second formula".

(b) In the event that the laws of the State of California, as they existed as of September 20, 1971, should at any time ever be amended or changed to permit general law cities, in granting franchise of the kind herein being granted to Grantee, to require the Grantee of any such franchise to pay or give any consideration or compensation in accordance with a formula (hereinafter referred to as "third formula") which, if applied to the City of San Jose and the Grantee herein, would provide payments to the City greater than provided for by the use of the formula hereinabove specified in the first paragraph of this section 4 or by the use of the above-mentioned "second formula" if such "second formula" is the higher, then in such event City shall have the right, at any time thereafter, to require Grantee to thereafter make payments in accordance with such "third formula"; provided, however that City shall not require Grantee to make any payments pursuant to the provision of this subparagraph B during the first thirty (30) years from September 20, 1971.

(c) Within the last six (6) calendar months of the calendar year 2001, and thereafter within the last six (6) calendar months of each ten (10) calendar year period following the calendar year 2001, each of such six (6) month periods being hereinafter referred to as "six-month-notice period," either City or Grantee, or each of them, may serve written notice upon the other of its desire to change the amount or kind of consideration or compensation to be annually paid

or given, after the expiration of such "six-month-notice period," by Grantee to City as consideration for said franchise and as compensation for the use by Grantee of the streets of the City as herein authorized and permitted, or of its desire to change the manner, measure or formula pursuant to which such annual consideration and compensation shall thereafter be determined. Said notice shall specify the change or changes desired. Within ninety (90) days from and after the date of service of such notice, or at such other time or times as the parties may mutually agree upon, City and Grantee shall meet and confer and attempt in good faith to resolve the matters at issue by mutual agreement. No such agreement shall be effective unless it is in writing, and unless it is approved and signed by both City and Grantee. No such agreement shall be deemed approved by City unless it shall have been approved and authorized by written ordinance adopted by the governing body of the City. Unless otherwise provided in the agreement, any change or changes agreed upon in any such agreement shall be effective from and after the commencement of the calendar year immediately following the expiration of the "six-month-notice period."

In the event that City and Grantee should fail to arrive at any agreement with respect to the proposed change or changes within ninety (90) days from and after the service of the above-mentioned notice, either party may thereafter serve upon the other a written notice of its intent to present the proposed change or changes to a Board of Arbitration for its consideration and decision. Unless otherwise agreed to by both parties, said notice must be served no later than the 30th day of June next following the expiration of the above-mentioned "six-month-notice period."

Unless otherwise agreed to by both parties in writing, the Board of Arbitration shall consist of seven (7) members, two (2) to be selected by the City, and two (2) to be selected by the Grantee. The four (4) arbitrators selected by the parties shall select three (3) neutral arbitrators. Within thirty (30) days after service of said notice of intent to submit said matter to arbitration, or within

such time as the parties may mutually agree upon in writing, each of the parties, respectively, shall select its two (2) members of the Board, and within thirty (30) days after the four (4) are selected, they shall select the three (3) neutral arbitrators. The Board of Arbitration shall then consider the proposed change or changes, and, after giving both parties a reasonable opportunity to be heard, shall determine what change or changes, if any, are to be made. The change or changes, if any, ordered by the Board, may differ from those requested or desired by either of the parties. The determination shall be fair and reasonable to both parties, and in arriving at it, the Board shall consider the nature and value of the rights and privileges granted by this ordinance to the Grantee, the costs, expenses and damages, if any, which City has, or will incur or suffer because of the grant of said rights and privileges to Grantee or because of Grantee's exercise of such rights and privileges, the amount to be paid to comparable cities for similar franchise rights and any and all other relevant factors. The Board's determination shall be in writing, shall be by the majority vote of its seven (7) members, and shall be final and conclusive and binding upon both parties. Unless otherwise agreed to by both parties in writing, the Board shall render its written decision on or before, and no later than, the last day of the first twelve (12) calendar months immediately following the expiration of the above-mentioned "six-month-notice period." Any change or changes made by the Board shall be effective retroactively as of the first day immediately following the end of the aforementioned "six-month-notice period," and shall continue in effect until such time as the consideration payable by Grantee to City is again changed pursuant to any of the provisions of this Section 4.

If said Board shall fail to arrive at a determination within the twelve (12) months immediately following the expiration of the above-mentioned "six-month-notice period," said Board, unless otherwise agreed to by both parties in writing, shall be deemed discharged, and, unless otherwise agreed to by both parties in



writing, a second Board, no members of which shall have been a member of the previous Board, shall be established as follows: City and Grantee shall each appoint two (2) new arbitrators; City and Grantee, or either of them, shall petition the Superior Court of the State of California in and for the County of Santa Clara to appoint three (3) neutral arbitrators and to order all seven (7) of said arbitrators to consider the proposed change or changes, to give both parties a reasonable opportunity to be heard, and to arrive at a determination within a reasonable time specified by the Court, as to what change or changes, if any, shall be made. The determination shall be fair and reasonable to both parties, and in arriving at it, the second Board shall consider all matters and factors which the former Board was required to consider. The second Board's determination shall be in writing, and must be by majority vote of all seven (7) members; and its determination shall be final and conclusive and binding upon both parties. Any change or changes made or ordered by the Board shall be effective retroactively as of the first day immediately following the end of the aforementioned "six-month-notice period" and shall continue in effect until such time as the consideration payable by Grantee to City is again changed pursuant to any of the provisions of this Section 4.

Unless otherwise agreed to by both parties in writing, all costs and expenses of the Boards of Arbitration, and court costs in the event recourse is had to the Superior Court as aforesaid, shall be paid equally by City and Grantee.

In the event any person appointed to serve as an arbitrator on either of the above-mentioned Boards should die or fail or be unable to perform the duties of an arbitrator, a substitute shall be appointed to serve in his place and stead by the party or body which appointed his predecessor.

In the event that the arbitrators fail to comply with the order of the court and to reach a decision by the majority vote of its seven (7) members within the period specified by the court, or within three (3) years from and after the date of expiration of the

above-mentioned "six-month-notice period," whichever is the shorter period of time, the party who proposed the change or changes shall thereafter have the right to terminate the rights, privileges and franchise granted by City to Grantee, and upon such termination, the rights, privileges and franchise of Grantee granted by this ordinance shall be at an end; provided, however, that such right of termination shall be deemed waived if not exercised within one hundred eighty (180) days immediately following the expiration of the time, specified by the court, within which the Board was required to reach a decision.

SECTION 3. That Section Five (5) of Ordinance No. 15880 is hereby amended, to be numbered and entitled and to read as follows:

SECTION 5. Reports, Dates of Payment. (a) On each Quarterly Payment Date Grantee shall pay to the City an amount equal to the Quarterly Payment Amount. Grantee shall make Quarterly Payments on each Quarterly Payment Date until such time as the Cumulative Value equals Three Million Four Hundred Thousand Dollars (\$3,400,000).

(b) Within three (3) months from and after the expiration of each calendar year, or fractional calendar year, following the effective date of this ordinance, Grantee shall file with the City Clerk of City the original, and with the Director of Finance of City a copy, and with the City Auditor of City another copy, of a duly verified statement showing in detail the gross receipts of Grantee and, if Quarterly Payments are required to be made pursuant to the provisions herein contained, the Cumulative Value of said Quarterly Payments, during the preceding calendar year or fractional calendar year, and such other data or information as City may need to calculate or determine the amounts which Grantee is obligated to pay City pursuant to the provisions of Section 4. Said statement shall be in such form and details as from time to time may be reasonably prescribed by City.

(c) Within fifteen (15) days from and after the time for filing such statement, Grantee shall pay to City, at the office of City's Director of Finance, in lawful money of the United States, the sum of

money hereinabove required to be paid by Grantee to City for the calendar year, or fractional calendar year, covered by the statement, minus the sum of the Quarterly Payment amounts if any are required to be made pursuant to the provisions herein contained, paid during the year.

(d) Any neglect, omission or refusal by Grantee to file such verified statement, or to pay said percentage at the time and in the manner specified shall be grounds for the declaration of a forfeiture of this franchise and of all rights and privileges of Grantee hereunder.

(e) In the event Grantee fails to make the payments for this franchise on or before the dates due as hereinabove provided, Grantee shall pay as additional consideration both of the following amounts:

(i) A sum of money equal to two percent (2%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by City by reason of the delinquent payment, including, but not limited to, the cost of administering, accounting and collecting said delinquent payment and the cost to City of postponing services and projects necessitated by the delay in receiving revenue.

(ii) A sum of money equal to one percent (1%) of the amount due per month as interest and for loss of use of the money due.

(f) At such time as the Cumulative Value of said Quarterly Payment equals the sum of Three Million Four Hundred Thousand Dollars (\$3,400,000) as specified in subsection (a) hereinabove, Grantee shall no longer be required to make Quarterly Payments. At said time, Grantee shall be required to pay City the sum of money required to be paid as consideration for the rights, privileges, and franchise granted herein on or before the fifteenth (15th) day from and after the time for filing of the duly verified statement showing in detail the gross receipts of Grantee during the prior calendar year or fractional calendar year in accordance with the procedures of this Section 5(b-e).

SECTION 4. That Ordinance No. 21177, passed for publication of title on November 23, 1982, is hereby repealed.

SECTION 5. That this ordinance amending Ordinance No. 15880, is conditioned upon the filing by Grantee with the City Clerk of a written acceptance of this amendment to the franchise granted by Ordinance No. 15880, which said written acceptance shall be so filed within ten (10) days of the adoption date of this amending ordinance. If Grantee shall fail to so file its written acceptance with said City Clerk within said ten (10) day period, this amendment shall be deemed revoked and of no force and effect.


SECTION 6. That all other terms, conditions, and provisions of Ordinance No. 15880 not amended herein shall remain in full force and effect.

PASSED FOR PUBLICATION OF TITLE this 5th day of June, 1984, by the following vote:

AYES: ALVARADO, BEALL, ESTRUTH, FLETCHER, HAMMER, IANNI, LEWIS, RYDEN, SAUSED0, WILLIAMS AND McENERY

NOES: NONE

ABSENT: NONE

  
THOMAS McENERY, Mayor

ATTEST:

  
HELEN E. JACKSON, City Clerk

ORDINANCE NO. 26914

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING  
ORDINANCE NO. 15880 AS AMENDED BY ORDINANCE  
NO. 21677, WHICH GRANTED A FRANCHISE FOR THE  
TRANSMISSION AND DISTRIBUTION OF ELECTRICITY  
WITHIN THE CITY OF SAN JOSE TO PACIFIC GAS &  
ELECTRIC COMPANY, TO ALLOW A CREDIT IN THE  
EVENT OF OVERPAYMENTS**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 5 of Ordinance No. 15880, as amended by Ordinance No. 21677,  
is amended to read as follows:

SECTION 5. Reports, Dates of Payment.

(a) On each Quarterly Payment Date Grantee shall pay to the City an amount equal to the Quarterly Payment Amount. Grantee shall make Quarterly Payments on each Quarterly Payment Date until such time as the Cumulative Value equals Three Million Four Hundred Thousand Dollars (\$3,400,000).

(b) Within three (3) months from and after the expiration of each calendar year, or fractional calendar year, following the effective date of this Ordinance, Grantee shall file with the City Clerk of the City the original, and with the Director of Finance of City a copy, and with the City Auditor of City another copy, of a duly verified statement showing in detail the gross receipts of Grantee and, if Quarterly Payments are required to be made pursuant to the provisions herein contained, the Cumulative Value of said Quarterly Payments, during the preceding calendar year or fractional calendar year, and such other data or information as City may need to calculate or determine the amounts which Grantee is obligated to pay City pursuant to the provisions of Section 4. Said

statement shall be in such form and details as from time to time may be reasonably prescribed by City.

(c) Within fifteen (15) days from and after the time for filing such statement, Grantee shall pay to City, at the office of City's Director of Finance, in lawful money of the United States, the sum of money hereinabove required to be paid by Grantee to City for the calendar year, or fractional calendar year, covered by the statement, minus the sum of the Quarterly Payment Amounts if any are required to be made pursuant to the provisions herein contained, paid during the year. In the event the total Quarterly Payment Amounts exceed the total annual payment due to City, upon the prior written acknowledgement by the Director of Finance that an overpayment appears to have occurred, Grantee shall deduct from each of the next year's Quarterly Payment Amounts the overpayment in equal amounts, without interest. The acknowledgement by the Director of Finance of an overpayment does not in anyway limit City's rights to seek payment in full from Grantee in the event City determines there was an underpayment of the annual payment due to City.

(d) Any neglect, omission or refusal by Grantee to file such verified statement, or to pay said percentage at the time and in the manner specified shall be grounds for the declaration of a forfeiture of this franchise and of all rights and privileges of Grantee hereunder.

(e) In the event Grantee fails to make the payments for this franchise on or before the dates due as hereinabove provided, Grantee shall pay as additional consideration both of the following amounts:

(i) A sum of money equal to two percent (2%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by City by reason of the delinquent payment, including, but not limited to, the cost of administering, accounting and collecting said

delinquent payment and the cost to City of postponing services and projects necessitated by the delay in receiving revenue.

(ii) A sum of money equal to one percent (1%) of the amount due per month as interest and for loss of use of the money due.

(f) At such time as the Cumulative Value of said Quarterly Payment equals the sum of Three Million Four Hundred Thousand Dollars (\$3,400,000) as specified in subsection (a) hereinabove, Grantee shall no longer be required to make Quarterly Payments. At said time, Grantee shall be required to pay City the sum of money required to be paid as consideration for the rights, privileges, and franchise granted herein on or before the fifteenth (15<sup>th</sup>) day from and after the time for filing of the duly verified statement showing in detail the gross receipts of Grantee during the prior calendar year or fractional calendar year in accordance with the procedures of this Section 5(b-e).

SECTION 2. This Ordinance amending Ordinance No. 15880, as amended by Ordinance No. 21677, is conditioned upon the filing by Grantee with the City Clerk of a written acceptance of this amendment to the franchise granted by Ordinance No. 15880, as amended by Ordinance No. 21677, which said written acceptance shall be so filed within ten (10) days of the adoption date of this amending Ordinance. If Grantee shall fail to so file its written acceptance with the City Clerk within said ten (10) day period, this amendment shall be deemed revoked and of no force and effect.

SECTION 3. All other terms, conditions, and provisions of Ordinance No. 15880, as amended by Ordinance No. 21677, not amended herein shall remain in full force and effect.

SECTION 4. This Ordinance shall be effective as of June 1, 2003, *nunc pro tunc*.



PASSED FOR PUBLICATION of title this 10<sup>th</sup> day of June, 2003, by the following vote:

AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, DANDO,  
GREGORY, LeZOTTE, REED, WILLIAMS, YEAGER;  
GONZALES

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE



RON GONZALES  
Mayor

ATTEST:



PATRICIA L. O' HEARN  
City Clerk

The foregoing instrument is  
a correct copy of the original  
on file in this office.

Attest:

PATRICIA L. O'HEARN  
City Clerk

City Clerk of the city of San Jose.  
County of Santa Clara, State of California.

By  Deputy

**ORDINANCE NO. 28720**

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING ORDINANCE NO. 15880 AS AMENDED BY ORDINANCE NO. 21677 AND ORDINANCE NO. 26914 WHICH GRANTED A FRANCHISE FOR THE TRANSMISSION AND DISTRIBUTION OF ELECTRICITY WITHIN THE CITY OF SAN JOSE TO PACIFIC GAS AND ELECTRIC COMPANY TO ADD A FRANCHISE FEE SURCHARGE OF 0.3% RESULTING IN A TOTAL FRANCHISE FEE REMITTED TO THE CITY OF 2.3% OF GROSS RECEIPTS AND TO PROVIDE FOR THE WAIVER OF CERTAIN NEGOTIATION AND ARBITRATION RIGHTS UNDER THE FRANCHISE**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Ordinance No. 15880, as amended by Ordinance No. 21677 and Ordinance No. 26914, is amended to add a new Section 4.1, to be numbered and entitled and to read as follows:

SECTION 4.1 Franchise Fee Surcharge.

(a) In addition to the annual compensation specified above in Section 4, and subject to the provisions set forth in Section 4(a)-(c), Grantee shall remit to the City during the term an additional sum of money equal to three tenths of one percent (0.3%) of the annual gross receipts of Grantee (the "Franchise Fee Surcharge") in consideration thereof and as compensation for the use of the streets of the City as herein authorized and permitted. Grantee shall remit to the City the Franchise Fee Surcharge, in lawful money of the United States, in the manner and on the conditions hereinafter set forth in Section 5, for each of the calendar years (or fractional calendar years) following the effective date of this Ordinance.

(b) Prior to Grantee's remittance to City of the Franchise Fee Surcharge, Grantee shall receive approval from the California Public Utilities Commission

("Commission") to collect the Franchise Fee Surcharge in accordance with Commission Decision 89-05-063, *Guidelines for the Equitable Treatment of Revenue Producing Mechanisms Imposed by Local Government Entities on Public Utilities*, 32 CPUC 2d 60, May 26, 1989.

SECTION 2. Section 5 of Ordinance No. 15880, as amended by Ordinance No. 21677 and Ordinance No. 26914, is amended to read as follows:

SECTION 5. Reports, Dates of Payment.

(a) On each Quarterly Payment Date, Grantee shall pay to the City an amount equal to the Quarterly Payment Amount. Grantee shall make Quarterly Payments on each Quarterly Payment Date until such time as specified in Section 5(f), notwithstanding anything to the contrary specified above in Section 1(i) that Grantee shall not be required to make a quarterly payment, or may pay a lesser Quarterly Payment Amount, if payment of the full Quarterly Payment Amount would result in a Cumulative Value equivalent exceeding Three Million Four Hundred Thousand Dollars (\$3,400,000).

(b) Within three (3) months from and after the expiration of each calendar year, or fractional calendar year, following the effective date of this Ordinance, Grantee shall file with the City Clerk of the City the original, and with the Director of Finance of City a copy, and with the City Auditor of City another copy, of a duly verified statement showing in detail the gross receipts of Grantee, and such other data or information as City may need to calculate or determine the amounts which Grantee is obligated to pay City pursuant to the provisions of Section 4. Said statement shall be in such form and details as from time to time may be reasonably prescribed by City.

(c) Within fifteen (15) days from and after the time for filing such statement, Grantee shall pay to City, at the office of City's Director of Finance, in lawful money of the United States, the sum of money hereinabove required to be paid by Grantee to City for the calendar year, or fractional calendar year, covered by the statement, minus the sum of the Quarterly Payment Amounts paid during the year. In the event the total Quarterly Payment Amounts exceed the total annual payment due to City, upon the prior written acknowledgement by the Director of Finance that an overpayment appears to have occurred, Grantee shall deduct from each of the next year's Quarterly Payment Amounts the overpayment in equal amounts, without interest. The acknowledgement by the Director of Finance of an overpayment does not in any way limit City's rights to seek payment in full from Grantee in the event City determines there was an underpayment of the annual payment due to City.

(d) Any neglect, omission or refusal by Grantee to file such verified statement, or to pay said percentage at the time and in the manner specified shall be grounds for the declaration of a forfeiture of this franchise and of all rights and privileges of Grantee hereunder.

(e) In the event Grantee fails to make the payments for this franchise on or before the dates due as hereinabove provided, Grantee shall pay as additional consideration both of the following amounts:

(i) A sum of money equal to two percent (2%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by City by reason of the delinquent payment, including, but not limited to, the cost of administering, accounting and collecting said delinquent payment and the cost to City of postponing services and projects necessitated by the delay in receiving revenue.

(ii) A sum of money equal to one percent (1%) of the amount due per month as interest and for loss of use of the money due.

(f) Grantee shall no longer be required to make Quarterly Payments if Grantee provides City with at least six (6) months' advance written notice of its intent to make annual payments instead as set forth below. The parties agree that such notice shall not be provided earlier than June 30, 2021. At said time, Grantee shall be required to pay City the sum of money required to be paid as consideration for the rights, privileges, and franchise granted herein on or before the fifteenth (15<sup>th</sup>) day from and after the time for filing of the duly verified statement showing in detail the gross receipts of Grantee during the prior calendar year or fractional calendar year in accordance with the procedures of this Section 5(b-e).

SECTION 3. If the Franchise Fee Surcharge is approved by the Commission, Grantee shall implement collection of the Franchise Fee Surcharge as soon as reasonably possible thereafter, but not later than 120 days following the Commission's approval. Grantee shall remit to the City the first Franchise Fee Surcharge payment on the first Quarterly Payment Date following the initial collection of the Franchise Fee Surcharge.

SECTION 4. The City and Grantee each expressly waives its rights under Section 4c of the franchise to provide the other with notice of its intent to change the amount or kind of consideration or compensation to be paid City or measure or formula to which the consideration and compensation is determined (for the franchise fee which is two percent (2%) of gross receipts and the Franchise Fee Surcharge which is three tenths of one percent (0.3%) of gross receipts) at any time before the last six (6) calendar months following calendar year 2021.

SECTION 5. This Ordinance amending Ordinance No. 15880, as amended by Ordinance No. 21677 and Ordinance No. 26914, is conditioned upon the filing by Grantee with the City Clerk of a written acceptance of this amendment to the franchise granted by Ordinance No. 15880, as amended by Ordinance No. 21677 and Ordinance No. 26914, which said written acceptance shall be so filed no later than ten (10) days of the adoption date of this amending Ordinance. If Grantee shall fail to so file its written acceptance with the City Clerk as specified in the preceding sentence, this amendment shall be deemed revoked and of no force and effect.

SECTION 6. All other terms, conditions, and provisions of Ordinance No. 15880, as amended by Ordinance No. 21677 and Ordinance No. 26914, not amended herein shall remain in full force and effect.

PASSED FOR PUBLICATION of title this 9th day of February, 2010, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,  
KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: NONE.

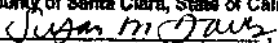
DISQUALIFIED: NONE.

ATTEST:

  
LEE PRICE, MMC  
City Clerk



CHUCK REED  
Mayor

The foregoing instrument is a correct copy of the original on file in this office.	
Attest:	
LEE PRICE City Clerk City of San Jose	
County of Santa Clara, State of California	
By	 Deputy
Date	02/24/10



**PG&E Gas and Electric  
Advice Filing List  
General Order 96-B, Section IV**

Aglet	Day Carter Murphy	Occidental Energy Marketing, Inc.
Alcantar & Kahl	Defense Energy Support Center	OnGrid Solar
Ameresco	Department of Water Resources	Praxair
Anderson & Poole	Department of the Army	R. W. Beck & Associates
Arizona Public Service Company	Dept of General Services	RCS, Inc.
BART	Division of Business Advisory Services	Recon Research
BP Energy Company	Douglass & Liddell	SCD Energy Solutions
Barkovich & Yap, Inc.	Downey & Brand	SCE
Bartle Wells Associates	Duke Energy	SMUD
Bloomberg New Energy Finance	Dutcher, John	SPURR
Boston Properties	Economic Sciences Corporation	Santa Fe Jets
C & H Sugar Co.	Ellison Schneider & Harris LLP	Seattle City Light
CA Bldg Industry Association	Foster Farms	Sempra Utilities
CAISO	G. A. Krause & Assoc.	Sierra Pacific Power Company
CLECA Law Office	GLJ Publications	Silicon Valley Power
	Goodin, MacBride, Squeri, Schlotz & Ritchie	Silo Energy LLC
CSC Energy Services	Green Power Institute	
California Cotton Ginners & Growers Assn	Hanna & Morton	Southern California Edison Company
California Energy Commission	International Power Technology	Sunshine Design
California League of Food Processors	Intestate Gas Services, Inc.	Sutherland, Asbill & Brennan
California Public Utilities Commission	Los Angeles Dept of Water & Power	Tabors Caramanis & Associates
Calpine	Luce, Forward, Hamilton & Scripps LLP	Tecogen, Inc.
Cameron McKenna	MBMC, Inc.	Tiger Natural Gas, Inc.
Casner, Steve	MRW & Associates	Tioga Energy
Chamberlain, Eric	Manatt Phelps Phillips	TransCanada
Chris, King	McKenzie & Associates	Turlock Irrigation District
City of Glendale	Merced Irrigation District	U S Borax, Inc.
City of Palo Alto	Mirant	United Cogen
Clean Energy Fuels	Modesto Irrigation District	Utility Cost Management
Coast Economic Consulting	Morgan Stanley	Utility Specialists
Commerce Energy	Morrison & Foerster	Verizon
Commercial Energy	NRG West	Wellhead Electric Company
		Western Manufactured Housing Communities Association (WMA)
Consumer Federation of California	New United Motor Mfg., Inc.	eMeter Corporation
Crossborder Energy	Norris & Wong Associates	
Davis Wright Tremaine LLP	North Coast SolarResources	